LIBRARY
OF THE
UNIVERSITY OF CALIFORNIA.
GIFT OF
U. S. Supt. of Documents.
Class

Property of the United States Government.

WAR DEPARTMENT :: OFFICE OF THE JUDGE-ADVOCATE GENERAL

THE
MILITARY LAWS OF THE UNITED STATES

Fourth Edition, 1901

Prepared under the direction of
The Honorable ELIHU ROOT, Secretary of War
By Brig. Gen. GEORGE B. DAVIS, Judge-Advocate General, United States Army

WITH SUPPLEMENT SHOWING CHANGES TO MARCH 4, 1907, AND APPENDICES

By MAJ. JOHN BIDDLE PORTER
Judge-Advocate, United States Army

LIBRARY
OF THE
UNIVERSITY
OF
CALIFORNIA

WASHINGTON
GOVERNMENT PRINTING OFFICE
1908

UB500
A2
1908

War Department.
Document No. 311.
Office of the Judge-Advocate General.

2

TABLE OF CONTENTS.

Page.

CHAPTER I. The Executive 5–11

II. Provisions Applicable to the Several Executive Departments 12–44

III. The Department of War 45–55

IV. Provisions Applicable to Several Classes of Officers 56–71

V. The Department of the Treasury—The Accounting Officers 72–120

VI. The Post-Office Department 121–126

VII. The Department of Justice—Habeas Corpus—The Court of Claims 127–158

VIII. The Department of the Navy—The Marine Corps 159–165

IX. The Department of the Interior 166

X. The Revised Statutes—The Statutes at Large—The Army Regulations—The Army Register 167–182

XI. The Military Establishment—General Provisions of Organization 183–204

XII. General Officers, Aids, and Military Secretaries 205–207

XIII. Rank and Command—Tactical and Territorial Organizations 208–213

XIV. The Staff Departments—General Provisions—Disbursing Officers 214–252

XV. The Adjutant-General's Department 253–258

XVI. The Inspector-General's Department 259–264

XVII. The Judge-Advocate-General's Department 265–268

XVIII. The Quartermaster's Department 269–292

XIX. The Subsistence Department 293–308

XX. The Pay Department 309–349

XXI. The Medical Department 350–365

XXII. The Engineer Department 366–438

XXIII. The Ordnance Department 439–459

XXIV. The Signal Department 460–465

XXV. The Record and Pension Office 466–473

XXVI. Post and Regimental Chaplains 474–476

XXVII. Commissioned Officers 477–502

XXVIII. Brevets—Medals of Honor—Certificates of Merit—Foreign Decorations 503–508

XXIX. Enlisted Men 509–532

XXX. Troops of the Line 533–542

XXXI. The Military Academy—The Service Schools 543–565

XXXII. Contracts and Purchases 566–596

XXXIII. The Public Lands—Military Reservations—Military Posts 597–626

XXXIV. The Public Property 627–634

XXXV. The Militia—The Militia of the District of Columbia—The Territorial Militia 635–670

XXXVI. Military Tribunals—Courts-Martial—Courts of Inquiry 671–748

XXXVII. Citizenship and Naturalization 749–757

XXXVIII. The Indians—Indian Agents—The Indian Country 758–791

XXXIX. Employment of Military Force—(1) In Resisting Invasion; (2) In Suppression of Insurrection; (3) In Support of the Civil Authority 792–831

166431

Page.
Chapter XL. Pensions 832–886
XLI. The Soldiers' Home 887–895
XLII. The National Home for Disabled Volunteer Soldiers 896–911
XLIII. The Government Hospital for the Insane 912–914
XLIV. National Military Parks—The Yellowstone Park 915–953
XLV. National Cemeteries 954–959
XLVI. Flag and Seal of the United States 960–961
XLVII. The Articles of War 962–1026

APPENDICES.

I. The Geneva Convention of 1864 1029–1034
II. Additional Articles of October 20, 1868 1034–1040
III. Additional agreement of July 29, 1899, for the Adaptation of the Rules of the Geneva Convention to Maritime Warfare 1041–1043
IV. The American National Red Cross 1044–1047
V. The Army Reorganization Act of February 2, 1901 1048–1066
VI. The Maximum Punishment Order 1067–1073
VII. Instructions for the Government of the Armies of the United States in the Field (General Orders, No. 100, War Department, of 1863) . 1074–1095
VIII. Civil Service Rules 1096–1116

LIBRARY OF THE UNIVERSITY OF CALIFORNIA

CHAPTER I.

THE EXECUTIVE.

Par.
1. The executive power.
2. Power of the President as Commander in Chief; the Cabinet; the pardoning power.
3. Term of office.
4. Succession of Vice-President.
5. Succession to President and Vice-President.
6. The same.
7. The treaty-making power; appointments to office.
8. Recess appointments.
9. The same.
10. Commissions.
11. Notification of appointments to Secretary of the Treasury.
12. The same, nominations, rejections, etc.

The Executive Power. Constitution, Art. II, sec. 1.

1. The executive power[1] shall be vested in a President of the United States of America. He shall hold his office during the term of four years. * * * *Constitution, Art. II, sec. 1.*

Power of the President as Commander in Chief. Sec. 2, *ibid.*

2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the militia of the several States, when called into the actual service of the United States;[2] he may require the opinion, in writing,

---

[1] *The Executive Power.*—The executive power is vested in a President, and, as far as his powers are derived from the Constitution, he is beyond the reach of any other Department, except in the mode prescribed by the Constitution through the impeaching power. Kendall *v.* U. S., 12 Pet., 524, 610; Marbury *v.* Madison, 1 Cranch, 137, 166.

Execution of the laws.—The President is required to see that the laws are faithfully executed, but he is not obliged to execute them himself. IV Opin. Att. Gen., 515; Williams *v.* U. S., 12 Pet., 524, 610. The President speaks and acts through the heads of the several Departments in relation to subjects which appertain to their respective duties. Wilcox *v.* Jackson, 13 Pet., 498, 513; Wolsey *v.* Chapman, 101 U. S., 755; Runkle *v.* U. S., 122 U. S., 543, 557. As a general rule, the direction of the President is presumed in all instructions and orders issuing from the competent Department. VII Opin. Att. Gen., 453. In a matter which the law confides to the pure discretion of the Executive, the decision of the President, or proper head of Department, on any question of fact involved is conclusive, and is not subject to review by any other authority in the United States. VI Opin. Att. Gen., 226. Marbury *v.* Madison, 1 Cr., 137, 166. The President can not be restrained by injunction from executing a law of Congress. Mississippi *v.* Johnson, 4 Wallace, 475; Bates *v.* Taylor, 11 S. W. Rep., 266.

[2] *Powers as Commander in Chief.*—As Commander in Chief he is authorized to direct the movements of the land and naval forces placed by law at his command, and to employ them in the manner he may deem most effectual to harass and conquer and subdue the enemy. He may invade the hostile country and subject it to the sovereignty and authority of the United States. But his conquests do not enlarge the boundaries of this Union, nor extend the operations of our institutions and laws beyond the limits before assigned to them by the legislative power. Fleming *v.* Page, 9 How., 603, 615. The power of command and control reserved by the Crown was

The Cabinet. of the principal officer in each of the Executive Departments upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.[1] *Constitution, Art. II, sec. 2.*

The pardoning power.

---

placed by the Constitution in the hands of the President. Street *v.* U. S., 24 Ct. Cls., 230; 25, ibid, 515, 113, U. S., 299. See, also, the chapter entitled THE EMPLOYMENT OF MILITARY FORCE.

Power to establish rules and regulations.—The power of the Executive to establish rules and regulations for the government of the Army is undoubted; * * * The power to establish implies, necessarily, the power to modify or repeal, or to create anew. U. S. *v.* Eliason, 16 Pet., 291, 301. The Army Regulations, when sanctioned by the President, has the force of law because it is done by him by the authority of law. U. S. *v.* Freeman, 3 How., 556, 567.

May form military governments in occupied territory.—As an incident of the exercise of belligerent rights, the President may form military and civil governments in the territory of the enemy occupied by the armies of the United States. Cross *v.* Harrison, 16 How., 164, 190, 193. The Grapeshot, 19 Wall., 129, 132. He may also institute temporary governments within insurgent districts occupied by the national forces. Texas *v.* White, 7 Wall., 700, 730.

May establish courts in occupied territory—Limitation.—The courts established or sanctioned in Mexico, during the war, by the commanders of the United States forces, were nothing more than the agents of the military power, to assist it in preserving order in the conquered territory, and to protect the inhabitants in their persons and property, while it was occupied by the American armies. They were subject to the military power, and their decisions were under its control whenever the commanding officer thought proper to interfere. Neither the President nor any military officer can establish a court in a conquered country, and authorize it to decide upon the rights of the United States, or of individuals in prize cases, nor to administer the laws of nations. Jecker *v.* Montgomery, 13 How., 498, 515. The Grapeshot, 9 Wall., 129, 132.

For authority to employ secret agents in time of war, see Totten *v.* U. S., 92 U. S., 105, 107. For powers and duties of the Executive in connection with the Army, the Militia, and the Army Regulations, etc., see the chapters so entitled.

The constitutional power of the President to command the Army and Navy, and of Congress "to make rules for the government and regulation of the land and naval forces" are distinct; the President can not, by military orders, evade the legislative regulations; Congress can not, by rules and regulations, impair the authority of the President as Commander in Chief. Swaim *v.* U. S., 28 Ct. Cls., 173. When a law is passed for the regulation of the Army, which does not impair the efficiency of the President as Commander in Chief, he becomes, as to that law, an executive officer, and is limited in the discharge of his duties by the statute. McBlair *v.* U. S., 19 ibid., 528.

[1] *The pardoning power.*—A pardon is an act of grace proceeding from the power intrusted with the execution of the laws, which exempts the individual on whom it is bestowed from the punishment the law inflicts for a crime he has committed. It is the private though official act of the executive magistrate, delivered to the individual for whose benefit it is intended, and not communicated officially to the court. U. S. *v.* Wilson, 7 Pet., 150, 161; Coke, 3d Inst., 233. The power which the Constitution confers upon the President to grant pardons can not be controlled or limited, in any manner, by Congress. Ex parte Garland, 4 Wall., 333, 380; U. S. *v.* Klein, 13 Wall., 128, 147; IV Opin. Att. Gen., 458; 19 ibid., 476.

Delivery and acceptance.—The pardon is a private though official act. It is official in that it is the act of the Executive; it is private in that it is delivered to the individual and not to the court. It must be pleaded, or brought officially to the knowledge of the court, in order that the court may give it effect in any given case. There is nothing peculiar in it to distinguish it from other acts It is a deed to the validity of which delivery is essential, and the delivery is not complete without acceptance. It may be rejected by the person to whom it is tendered, and, if rejected, there is no power in the court to force it upon the individual. U. S. *v.* Wilson, 7 Pet., 150.

Effects.—Subject to exceptions therein provided, a pardon by the President restores to its recipient all rights of property lost by the offense pardoned, unless the prop-

3. The term of four years for which a President and Vice-President shall be elected shall in all cases commence on the 4th day of March next succeeding the day on which the votes of the electors have been given.

Term of office. Sec. 152, R. S.

4. In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve

Succession of Vice-President. Constitution, Art. II, sec. 1.

---

erty has, by judicial process, become vested in other persons. Osborn *v.* U. S., 91 U. S., 474; V Opin. Att. Gen., 532.

Power to mitigate and commute.—The President may, by an exercise of the pardoning power, mitigate or commute a punishment imposed by any court of the United States. Ex parte Wells, 18 How., 307; In re Ross, 140 U. S., 453. In mitigating the sentence of a naval court-martial the President may substitute a suspension for a term of years without pay for an absolute dismissal from the service; as suspension is but an inferior degree of the same punishment. I Opin. Att. Gen., 433.

Conditional pardons.—The language of the Constitution is such that the power of the President to pardon conditionally is not one of inference, but is conferred in terms, the language being "to grant reprieves and pardons," which includes absolute as well as conditional pardons. Under this power the President can grant a conditional pardon to a person under sentence of death, offering to commute that punishment into an imprisonment for life. If this is accepted by the convict he has no right to contend that the pardon is absolute and the condition of it void. Ex parte Wells, 18 How., 307; Osborn *v.* U. S., 91 U. S., 474; U. S. *v.* Wilson, 7 Pet., 150. When a pardon is granted with conditions annexed the conditions must be performed before the pardon is of any effect. Waring *v.* U. S., 7 Ct. Cls., 501. One who claims the benefit of a pardon must be held to strict compliance with its conditions. Haym *v.* U. S., 7 Ct. Cls., 443; Scott *v.* U. S., 8 ibid., 457. The condition annexed to a pardon must not be impossible, unusual, or illegal; but it may, with the consent of the prisoner, be any punishment recognized by the statutes, or by the common law as enforced by the State. Lee *v.* Murphy, 22 Grat. (Va.), 789.

Time of exercise.—The President of the United States has the conditional power to pardon as well before trial and conviction as afterwards; but it is a power only to be exercised with reserve and for exceptional considerations. VI Opin. Att. Gen., 20; 1 ibid., 341; 2 ibid., 275; 5 ibid., 687; Ex parte Garland, 4 Wall., 333; Dominick *v.* Davidson, 44 Ga., 457; 5 Blair *v.* Com., 25 Grat. (Va.), 850. It is competent for the President to grant a pardon after the expiration of the term of sentence, thereby relieving from consequential disabilities. Stetler's Case, 1 Phil., IX, 38; Com. *v.* Bush, 2 Duv. (Ky.), 264.

Limitation upon the pardoning power.—The Constitution gives to Congress the power to dispose of the public property and to the President only the power to pardon crimes; and the President, having no title to forfeited property, can not restore it, though he may pardon the offense which caused the forfeiture. Property confiscated by judgment to the United States is beyond the reach of executive clemency and is absolutely national property. Knote *v.* U. S., 10 Ct. Cls., 397, 406; U. S. *v.* Six Lots of Ground, 1 Woods, 234; Osborn *v.* U. S., 91 U. S., 474, 477.

Pleading.—A pardon is a deed, to the validity of which delivery is essential, and delivery is not complete without acceptance. * * * The pardon may possibly apply to a different person or to a different crime. It may be absolute or conditional. It may be controverted by the prosecutor and must be expounded by the court. These circumstances combine to show that this, like any other deed, ought to be brought before the court by plea, motion, or otherwise. U. S. *v.* Wilson, 7 Pet., 150, 161; Ex parte Reno, 66 Mo., 266. The recital of a specific, distinct offense, in a pardon by the President, limits its operation to that offense, and such pardon does not embrace any other offense for which separate penalties and punishments are provided. Ex parte Weimer, 8 Biss., C. Ct., 321. The conviction having been of two offenses, and the pardon reciting only one, the pardon operates upon the offense recited. State *v.* Foley, 15 Nev., 64.

Officers of the United States.—Any person occupying a position under the Federal Government, conferred upon him by a legally authorized election or appointment, whose duties consist in the exercise of important public powers and trusts, as a part of the regular administration of the Government, such duties being continuing and permanent, not occasional or temporary, and prescribed by the Government or by a on the Vice-President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected. *Constitution*, *Art. II*, *sec. 1*, *par. 6*.

Provision for Acting President should vacancy occur in offices of President and Vice-President Jan. 19, 1886, s. 1, v. 24, p. 1.

5. In case of removal, death, resignation, or inability of both the President and Vice-President of the United States, the Secretary of State, or if there be none, or in case of his removal, death, resignation, or inability, then the Secretary of the Treasury, or if there be none, or in case of his removal, death, resignation, or inability, then the Secretary of War, or if there be none, or in case of his removal, death, resignation, or inability, then the Attorney-General, or if there be none, or in case of his

---

superior officer, and whose compensation is paid out of the Treasury, is an officer of the United States. U. S, *v.* Hartwell, 6 Wallace, 385; U. S. *v.* Germaine, 99 U. S., 508; U. S. *v.* Maurice, 2 Brock., 103. Unless one in the service of the United States holds his office by virtue of an appointment made by one of the courts of justice or heads of departments authorized by law to make such appointment, he is not, strictly speaking, an officer of the United States. U. S. *v.* Mouat, 124 U. S., 303; U. S. *v.* Hendee, 124 U. S., 309; U. S. *v.* Smith, 124 U. S., 525. Noncommissioned officers are not officers in the sense in which the latter term is generally used. Babbitt *v.* U. S., 16 Ct. Cls., 202.

Appointments to office.—Appointments provided for by act of Congress, merely in general terms, must be made by and with the advice and consent of the Senate. VI Opin. Att. Gen., 1. When a person has been nominated to an office by the President, confirmed by the Senate, and his commission has been signed by the President, and the seal of the United States affixed thereto, his appointment to that office is complete. Congress may provide * * * that certain acts shall be done by the appointee before he shall enter on the possession of the office under the appointment. These acts then become conditions precedent to the complete investiture of the office; but they are to be performed by the appointee, not by the Executive; all that the Executive can do to invest the person with his office has been completed when the commission has been signed and sealed, and when the person has performed the required condition, his title to enter on the possession of the office is also complete. U. S. *v.* Le Baron, 19 How., 73, 78; U. S. *v.* Stewart, ibid., 79; Marbury *v.* Madison, 1 Cranch, 137.

Powers of officers.—All the officers of the Government, from the highest to the lowest, are but agents with delegated powers, and if they act beyond the scope of their delegated powers their acts do not bind the principal. U. S. *v.* Maxwell Grant, 21 Fed. Rep., 19. An officer can only bind the Government by acts which come within a just exercise of his official power. Hunter *v.* U. S., 5 Pet., 173, 178; The Floyd Acceptances, 7 Wall., 666; State *v.* Hastings, 12 Wis., 596. It is a question of law for the court whether an act is a part of the official duty of a public officer. U. S. *v.* Buchanan, 8 How., 83. Every public officer is required to perform all duties which are strictly official, although they may be required by laws passed after he comes into office, and may be cumulative upon his original duties, and although his compensation therefor be wholly inadequate. In such case he must look to the bounty of Congress for any additional reward. Andrews *v.* U. S., 2 Story, 202. An officer is bound to use that care and diligence in the discharge of his duties that a conscientious and prudent man, acting under a just sense of his obligations, would exercise under the circumstances of a particular case, and if he fails and neglects to do so he is culpable. U. S. *v.* Baldridge, 11 Fed. Rep., 552.

Presumptions as to official acts.—The acts of an officer to whom a public duty is assigned, within the sphere of that duty, are prima facie within his power. U. S. *v.* Arredondo, 6 Pet., 691; U. S. *v.* Clarke, 8 ibid., 436, 452; Percheman *v.* U. S., 7 ibid., 51; Delassus *v.* U. S.; 9 ibid., 117, 134; Strother *v.* Lucas, 12 ibid., 410, 438; U. S. *v.*

removal, death, resignation, or inability, then the Postmaster-General, or if there be none, or in case of his removal, death, resignation, or inability, then the Secretary of the Navy, or if there be none, or in case of his removal, death, resignation, or inability, then the Secretary of the Interior, shall act as President until the disability of the President or Vice-President is removed or a President shall be elected: *Provided*, That whenever the powers and duties *Proviso.* of the office of President of the United States shall devolve upon any of the persons named herein, if Congress be not then in session, or if it would not meet in accordance with law within twenty days thereafter, it shall be the duty of the person upon whom said powers and duties shall devolve to issue a proclamation convening Congress in extraordinary session, giving twenty days' notice of the time of meeting. *Act of January 19, 1886, 24 Stat. L., 1.*

Peralta, 19 How., 343, 347. When a particular functionary is clothed with the duty of deciding a certain question of fact, his decision, in the absence of fraud, is conclusive. Logan *v.* The County, 16 Wall., 6. He who alleges that an officer intrusted with important duty has violated his instructions must show it. The courts ought to require very full proof that an officer has transcended his powers before they so determine. U. S. *v.* Peralta, 19 How., 343, 347; Delassus *v.* U. S., 9 Pet., 117, 134. When a public officer is to do any act on proof of certain facts, of the competency and sufficiency of which he is to judge, it is to be presumed, from the doing of the act, that the proof was regularly and satisfactorily made, and its sufficiency is not subject to reexamination. Phil. and Tren. R. R. Co. *v.* Stimpson, 14 Pet., 448.

Tenure.—The power to appoint includes the power to remove, when the Constitution has not otherwise provided, and when the laws of Congress have not fixed a tenure of office. Ex parte Hennen, 13 Pet., 230; Parsons *v.* U. S., 167 U. S., 324; U. S. *v.* Avery, Deady, 204. When Congress, by law, vests the appointment of inferior officers in the heads of Departments, it may limit and restrict the power of removal as it deems best for the public interests. U. S. *v.* Perkins, 116 U. S., 483.

Resignation.—That a public office may be vacated by resignation is established by long and familiar practice, and is recognized by express provision of law. Nor can there be any doubt that a resignation may be effected by the concurrence of the officer and the appointing power; its essential elements are an intent to resign on the one side and an acceptance on the other. It may be either in writing or by parol, expressly or by implication. To perfect a resignation nothing more is necessary than that the proper authority manifest in some way its acceptance of the offer to resign. It then becomes effectual, and operates to relieve the incumbent either immediately or on the day specially fixed according to its terms. An offer to resign is revocable prior to acceptance; after acceptance and before it has taken effect it may be modified, or withdrawn by consent of both parties, but this control extends no further. When a resignation once takes effect the official relations of the incumbent are ipso facto dissolved; he has no longer any right to, or hold upon, the office. XIV Opin. Att. Gen., 259.

Removal.—In the absence of all constitutional provision or statutory regulation, it would seem to be a sound and necessary rule to consider the power of removal as incident to the power of appointment. In re Hennen, 13 Pet., 230, 259. It was the purpose of Congress, in the repeal of the tenure of office sections of the Revised Statutes (secs. 1767–1775, Rev. Stat., repealed by act of March 3, 1887, 24 Stat. L., 500), to again concede to the President the power of removal, if taken from him by the original tenure of office act, and, by reason of the repeal, to thereby enable him to remove an officer when in his discretion he regards it for the public good, although the term of office may have been limited by the words of the statute creating the office. Parsons *v.* U. S., 167 U. S., 324. See, also, ninety-ninth article of war, secs. 1230, 1228, Rev. Stat., and articles 36 and 37 of articles for the government of the Navy; VI Opin. Att. Gen., 4; XII, ibid, 421; XV, ibid, 421; IV, Compt. Dec., 58, 466, 601, and Blake *v.* U. S., 103 U. S., 227.

Eligibility.
Sec. 2, *ibid.*

6. The preceding section shall only be held to describe and apply to such officers as shall have been appointed by the advice and consent of the Senate to the offices therein named, and such as are eligible to the office of President under the Constitution, and not under impeachment by the House of Representatives of the United States at the time the powers and duties of the office shall devolve upon them respectively.[1] *Section 2*, *ibid.*

Treatymaking power.

Appointing power.

7. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of Departments.[2] *Constitution*, *Art. II*, *sec. 2*, *par. 2.*

8. The President shall have power to fill up all vacancies that may happen duing the recess of the Senate, by granting commissions which shall expire at the end of their next session. *Ibid.*, *par. 3.*

Recess appointments.

Mar. 2, 1867, s. 3, v. 14, p. 430.
Apr. 5, 1869, s. 3, v. 16, p. 7.

9. The President is authorized to fill all vacancies which may happen during the recess of the Senate by reason of death, or resignation, or expiration of term of office, by granting commissions which shall expire at the end of their next session thereafter, and if no appointment, by and with the advice and consent of the Senate, is made to an office so vacant or temporarily filled during such next session of the Senate, the office shall remain in abeyance, without any salary, fees, or emoluments attached thereto, until it is filled by appointment thereto by and with the advice and consent of the Senate; and during such time all the powers and duties belonging to such office shall be exercised by such other officer as may by law exercise such powers and duties in case of a vacancy in such office.[1]

---

[1] Sections 146, 147, 148, and 149 of the Revised Statutes were repealed by the act of January 19, 1886 (24 Stat. L., 1).

[2] *Public office.*—An office is a public station, or employment, conferred by the appointment of Government. The term embraces the ideas of tenure, emolument, and duties. * * * The duties are continuing and permanent, not occasional and transitory, and are defined by rules prescribed by Government and not by contract. * * * A Government office is different from a Government contract. The latter, from its nature, is necessarily limited in its duration and specific in its objects. The terms agreed upon define the rights and obligations of both parties, and neither may depart from them without the assent of the other. U. S. *v.* Hartwell, 6 Wall., 385, 394; U. S. *v.* Maurice, 2 Brockenbrough, 103. A public officer is the incumbent of an office "who exercises continuously, and as a part of the regular and permanent administration of the Government, its public powers, trusts, and duties." Sheboygan Co. *v.* Parker, 3 Wall., 93, 96. Unless a person in the service of the Government holds his place by virtue of an appointment by the President, or of one of the courts of justice or heads of Departments authorized by law to make such an appointment, he is not, strictly speaking, an officer of the United States. U. S. *v.* Mouat, 124 U. S., 303, 307; U. S. *v.* Germaine, 99 U. S., 508, 510.

Sec. 1769, R. S.

Commissions.

Mar. 2, 1867, c. 154, s. 6, v. 14, p. 431.

Sec. 1773, R. S.

10. The President is authorized to make out and deliver, after the adjournment of the Senate, commissions for all officers whose appointments have been advised and consented to by the Senate.[1]

Notification of appointments to Secretary of Treasury.

Mar. 2, 1867, c. 154, s. 8, v. 14, p. 431.

Sec. 1774, R. S.

11. Whenever the President, without the advice and consent of the Senate, designates, authorizes, or employs any person to perform the duties of any office, he shall forthwith notify the Secretary of the Treasury thereof, and the Secretary of the Treasury shall thereupon communicate such notice to all the proper accounting and disbursing officers of his Department. The Secretary of the Senate shall, at the close of each session thereof, deliver to the Secretary of the Treasury, and to each of the Assistant Secretaries of the Treasury, and to each of the Auditors, and to each of the Comptrollers in the Treasury, and to the Treasurer, and to the Register of the Treasury, a full and complete list, duly certified, of all the persons who have been nominated to and rejected by the Senate during such session, and a like list of all the offices to which nominations have been made and not confirmed and filled at such session.

Notification of nominations, rejections, etc., to Secretary of Treasury.

Mar. 2, 1867, c. 154, s. 7, v. 14, p. 431.

Sec. 1775, R. S.

---

[1] For statutory requirements in respect to commissions to military officers see the chapter entitled COMMISSIONED OFFICERS.

CHAPTER II.

PROVISIONS APPLICABLE TO THE SEVERAL EXECUTIVE DEPARTMENTS.

Par.
12. Application of title.
13–19. Temporary vacancies; how filled.
20. Regulations for Executive Departments.
21–24. Chief clerks; disbursing clerks.
25–31. Appointment of clerks; restrictions.
32–37. Classification of clerks.
38–42. Salaries.
43–45. Leaves of absence; sick leaves.
46–48. Legal holidays.
49–51. Administration of oaths.
52, 53. Hours of labor in Executive Dements.
54–60. Contingent funds.
61. Requisitions for funds; advances, warrants.

Par.
62–78. Estimates.
79–81. Procurement of supplies; contracts and purchases.
82. Purchase of stationery.
83–85. Inspection of fuel in the District of Columbia.
86–91. Annual reports.
92. The Official Register.
93–102. Miscellaneous requirements.
103–105. Destruction, forgery, etc., of public records.
106, 107. Disposition of useless papers.
108. Books and papers to be open to examination of accounting officers of the Treasury.
109. Departmental libraries.
110–116. Prosecution of claims.

Application of provisions of this title.

12. The provisions of this title shall apply to the following Executive Departments:

First. The Department of State.

Sec. 158, R. S. Second. The Department of War.

Third. The Department of the Treasury.

Sec. 159, R. S. Fourth. The Department of Justice.

Fifth. The Post-Office Department.

Sixth. The Department of the Navy.

Seventh. The Department of the Interior.

Word "Department."

The word "Department" when used alone in this title, and titles five, six, seven, eight, nine, ten, and eleven, means one of the Executive Departments enumerated in the preceding section.[1]

---

[1] The titles so numbered in the Revised Statutes are the ones above referred to.

TEMPORARY VACANCIES.

Par.
13. First assistant to act.
14. Vacancies in subordinate offices.
15. Discretionary authority of the President.
16. General Commanding Army and heads of bureaus to act as Secretary of War.

Par.
17. Restriction on temporary appointments.
18. The same.
19. No extra compensation for temporary officers.

13. In case of the death, resignation, absence, or sickness of the head of any Department, the first or sole assistant thereof shall, unless otherwise directed by the President, as provided by section one hundred and seventy-nine,[1] perform the duties of such head until a successor is appointed, or such absence or sickness shall cease.

Vacancies; how temporarily filled.
July 23, 1868, c. 227, s. 1, v. 15, p. 168.
Sec. 177, R. S.

14. In case of the death, resignation, absence, or sickness of the chief of any Bureau, or of any officer thereof, whose appointment is not vested in the head of the Department, the assistant or deputy of such chief or of such officer, or if there be none, then the chief clerk of such Bureau, shall, unless otherwise directed by the President, as provided by section one hundred and seventy-nine, perform the duties of such chief or of such officer until a successor is appointed or such absence or sickness shall cease.[2]

Vacancies in subordinate offices.
July 23, 1868, c. 227, s. 2, v. 15, p. 168.
Sec. 178, R. S.

15. In any of the cases mentioned in the two preceding sections,[3] except the death, resignation, absence, or sickness of the Attorney-General, the President may, in his discretion, authorize and direct the head of any other Department or any other officer in either Department whose appointment is vested in the President, by and with the advice and consent of the Senate, to perform the duties of the vacant office until a successor is appointed, or the sickness or absence of the incumbent shall cease.[4]

Discretionary authority of the President.
July 23, 1868, c. 227, s. 3, v. 15, p. 168; June 22, 1870, c. 150, s. 2, v. 16, p. 162.
Sec. 179, R. S.

16. The President may authorize and direct the Commanding General of the Army or the chief of any military Bureau of the War Department to perform the duties of the Secretary of War under the provisions of section one hundred and seventy-nine of the Revised Statutes, and section twelve hundred and twenty-two of the Revised Statutes shall not be held or taken to apply to the officer

Commanding General of the Army, etc., may be designated by President to perform duties of Secretary of War.
Aug. 5, 1882, v. 22, p. 238.

---

[1] Section 179, Revised Statutes, paragraph 15, *post.*

[2] See XIX Opin. Att. Gen., 503.

[3] Sections 177 and 178, Revised Statutes, paragraphs 13 and 14, *ante.*

[4] The vacancy occasioned by the retirement of the head of a staff department may be temporarily filled by an *ad interim* appointment, under the authority conferred by section 179. Revised Statutes. XIX Opin. Att. Gen., 500.

so designated by reason of his temporarily performing such duties. *Act of August 5, 1882 (22 Stat. L., 238).*

Temporary appointments limited to thirty days.
July 23, 1868, c. 227, s. 3, v. 15, p. 168; Feb. 6, 1891, v. 26, p. 733.
Sec. 180, R. S.

17. A vacancy occasioned by death or resignation must not be temporarily filled under the three preceding sections for a longer period than thirty days. *Act of February 6, 1891 (26 Stat. L., 733).*

Restriction on temporary appointments.
July 23, 1868, c. 227, s. 2, v. 15, p. 168.
Sec. 181, R. S.

18. No temporary appointment, designation, or assignment of one officer to perform the duties of another, in the cases covered by sections one hundred and seventy-seven and one hundred and seventy-eight,[1] shall be made otherwise than as provided by those sections, except to fill a vacancy happening during a recess of the Senate.

Extra compensation disallowed.
July 23, 1868, c. 227, s. 3, v. 15, p. 168.
Sec. 182, R. S.

19. An officer performing the duties of another office, during a vacancy, as authorized by sections one hundred and seventy-seven, one hundred and seventy-eight [Rev. Stat.], and one hundred and seventy-nine [ibid.], is not by reason thereof entitled to any other compensation than that attached to his proper office.

REGULATIONS FOR EXECUTIVE DEPARTMENTS.

Departmental regulations.
July 27, 1789, c. 4, v. 1, p. 28; Sept. 15, 1789, c. 14, v. 1, p. 68; Aug. 7, 1849, c. 7, v. 1, p. 49; Sept. 2, 1789, c. 12, v. 1, p. 65; June 8, 1872, c. 335, v. 17, p. 283; Apr. 30, 1798, c. 35, v. 1, p. 553; June 22, 1870, c. 150, s. 8, v. 16, p. 163; Mar. 3, 1849, c. 108, v. 9, p. 395. Sec. 161, R. S.

20. The head of each Department is authorized to prescribe regulations, not inconsistent with law, for the government of his Department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it.[2]

---

[1] Sections 177 and 178. Revised Statutes: paragraphs 13 and 14, *ante*.

[2] The President speaks and acts through the heads of the several Executive Departments in relation to subjects which appertain to their respective duties. Wilcox *v.* Jackson, 13 Pet., 498, 513; Wolsey *v.* Chapman, 101 U. S., 755. It is the general theory of departmental administration that the heads of the Executive Departments are the executors of the will of the President. X Opin. Att. Gen., 527. As a general rule the direction of the President is to be presumed in all instructions and orders issuing from the competent Department. VII id., 453. Official instructions issued by the heads of the several Executive Departments, civil and military, within their respective jurisdictions, are valid and lawful, without containing express reference to the direction of the President. VII id., 453. The duties of the heads of the several Executive Departments are derived, in part, from the Constitution, and are, in part, imposed by statute. In the execution of the former they act as the representatives of the President, to whom they are responsible for their correct performance. For duties imposed by statute their responsibility is to the legislature, and they are controlled in all matters relating to performance by such statutory rules and regulations as Congress may see fit to impose. (See Marbury *v.* Madison, 1 Cr., 137, and par. 1, note 1.)

The executive power is vested in a President, and so far as his powers are derived from the Constitution he is beyond the reach of any other Department, except in the mode prescribed by the Constitution through the impeaching power, but it by no means follows that every officer in every branch of that Department is under the exclusive direction of the President. * * * There are certain political duties imposed upon many officers in the Executive Department the discharge of which is under the direction of the President, but it would be an alarming doctrine that Congress can not impose upon any executive officer any duty they may think

CHIEF CLERKS; DISBURSING CLERKS.

Par.
21. Duties of chief clerks.
22. To distribute clerical duties; monthly reports.
23. Action on report.
24. Disbursing clerks; duties and compensation.

Chief clerks to supervise subordinate clerks.

21. Each chief clerk in the several Departments, and Bureaus, and other offices connected with the Departments,

---

proper, which is not repugnant to any rights secured and protected by the Constitution, and in such cases the duty and responsibility grow out of and are subject to the control of the law and not to the direction of the President, and this is emphatically the case where the duty is of a ministerial character. Kendall *v.* U. S., 12 Pet., 524, 610. See, also, the title *Army Regulations* in the chapter entitled THE REVISED STATUTES; THE STATUTES AT LARGE; THE ARMY REGULATIONS.

Ministerial and discretionary duties.—The duties performed by the heads of the several Executive Departments are either ministerial or discretionary or quasi judicial in character. "The question whether the legality of an act of the head of a Department be examinable in a court of justice or not must always depend on the nature of the act. By the Constitution of the United States the President is invested with certain important political powers in the exercise of which he is to use his own discretion, and is accountable only to his country in his political character and to his own conscience. To aid him in the performance of these duties he is authorized to appoint certain officers, who act by his authority and in conformity to his orders. In such cases their acts are his acts, and, whatever opinion may be entertained of the manner in which Executive discretion may be used, still there exists and can exist no power to control their discretion. The subjects are political. They respect the nation, not individual rights, and being intrusted to the Executive, the decision of the Executive is conclusive. * * * The conclusion is that where the heads of Departments are the political or confidential agents of the Executive, merely to execute the will of the President, nothing can be more perfectly clear than that their acts are only politically examinable. Marbury *v.* Madison, 1 Cr., 137, 166; Kendall *v.* U. S., 12 Pet., 524, 611; Decatur *v.* Paulding, 14 Pet., 497, 515. We are not aware of any case in England or this country in which it has been held that a public officer, acting to the best of his judgment and from a sense of duty, in a matter of account with an individual, has been held liable for an error of judgment. * * * A public officer is not liable to an action if he falls into error in a case where the act to be done is not merely a ministerial one but is one in relation to which it is his duty to exercise judgment and discretion, even though an individual may suffer by his mistake. A contrary principle would indeed be pregnant with the greatest mischiefs. Kendall *v.* Stokes, 3 How., 87, 98; Gould *v.* Hammond, 1 McAll., 235, 243; Noble *v.* Union River Logging Co., 147 U. S., 165, 171.

A ministerial duty the performance of which may in proper cases be required of the head of a Department by judicial process is one in respect to which nothing is left to discretion. It is a simple, definite duty, arising under conditions admitted or proved to exist and imposed by law. Mississippi *v.* Johnson, 4 Wall., 475, 498; Marbury *v.* Madison, 1 Cr., 137; Kendall *v.* Stockton, 12 Pet., 524. As a mandamus can only be granted because there is no other adequate remedy at law, an action for damages can not be afterwards sustained for the same cause of action, the two being inconsistent. Kendall *v.* Stokes, 3 How., 87, 102.

Liability for damages.—The executive officers of the United States are personally liable at law for damages, in the ordinary forms of action, for illegal official or ministerial acts or omissions to the injury of an individual. Marbury *v.* Madison, 1 Cr., 137, 166; Gaines *v.* Thompson, 7 Wall., 347; Amy *v.* The Supervisors, 11 Wall., 136, 137, 166. Where a ministerial officer acts in good faith he is not liable in exemplary damages for an injury done, but he can claim no further exemption where his acts are clearly against the law. Tracy *v.* Swartwout, 10 Pet., 80.

Measure of damages.—Where the law requires absolutely a ministerial act to be done by a public officer, and he neglects or refuses to do such act, he may be compelled to respond in damages to the extent of the injury arising from his conduct. A mistake as to his duty and honest intentions will not excuse the offender. Amy *v.* The Supervisors, 11 Wall., 136. Where an action is brought for an injury done in the discharge of an official duty, the damages are measured generally by the extent of that injury. Bispham *v.* Taylor, 2 McLean, 408. Pierce *v.* Strickland, 2 Story, 292. For general provisions respecting public officer, see Chapter IV and par. 4, ante.

Aug. 26, 1842, c. 202, s. 13, v. 5, p. 525.
Sec. 173, R. S.

shall supervise, under the direction of his immediate superior, the duties of the other clerks therein, and see that they are faithfully performed.[1]

Chief clerks to distribute duties, etc.
Aug. 26, 1842, c. 202, s. 13, v. 5, p. 525.
Sec. 174, R. S.

22. Each chief clerk shall take care, from time to time, that the duties of the other clerks are distributed with equality and uniformity, according to the nature of the case. He shall revise such distribution from time to time, for the purpose of correcting any tendency to undue accumulation or reduction of duties, whether arising from individual negligence or incapacity, or from increase or diminution of particular kinds of business. And he shall report monthly to his superior officer any existing defect that he may be aware of in the arrangement or dispatch of business.

Duty of chief on receipt of report.
Aug. 26, 1842, c. 202, s. 13, v. 5, p. 525.
Sec. 175, R. S.

23. Each head of a Department, chief of a Bureau, or other superior officer, shall, upon receiving each monthly report of his chief clerk, rendered pursuant to the preceding section, examine the facts stated therein, and take such measures, in the exercise of the powers conferred upon him by law, as may be necessary and proper to amend any existing defects in the arrangement or dispatch of business disclosed by such report.

Disbursing clerks.
Mar. 3, 1853, c. 97, s. 3, v. 10, pp. 209, 211; Mar. 3, 1855, c. 175, s. 4, v. 10, p. 669; Mar. 3, 1873, c. 226, s. 1, v. 17, p. 485 (492).
Sec. 176, R. S.

24. The disbursing clerks authorized by law in the several Departments shall be appointed by the heads of the respective Departments, from clerks of the fourth class; and shall each give a bond to the United States for the faithful discharge of the duties of his office according to law in such amount as shall be directed by the Secretary of the Treasury, and with sureties to the satisfaction of the Solicitor of the Treasury; and shall from time to time renew, strengthen, and increase his official bond, as the Secretary of the Treasury may direct. Each disbursing clerk, except the disbursing clerk of the Treasury Department, must, when directed so to do by the head of the Department, superintend the building occupied by his Department. Each disbursing clerk is entitled to receive, in compensation for his services in disbursing, such sum in addition to his salary as a clerk of the fourth class as shall make his whole annual compensation two thousand dollars a year.

Compensation.

---

[1] For authority of chief clerks to administer oaths of office, see the act of August 29, 1890 (26 Stat. L., 371), paragraph 49 post; for statutory duties of the chief clerk of the War Department, see paragraphs 22, 23, and 134 post.

APPOINTMENT OF CLERKS; RESTRICTIONS ON APPOINTMENT.

Par.
25. Authority to employ.
26. Restriction on employment.
27. Payments from specific appropriations.
28. Employees elsewhere not to be detailed in Washington.

Par.
29. Voluntary service prohibited.
30. Civil pension roll prohibited.
31. Payment of incapacitated persons.

25. Each head of a Department is authorized to employ in his Department such number of clerks of the several classes recognized by law, and such messengers, assistant messengers, copyists, watchmen, laborers, and other employees, and at such rates of compensation, respectively, as may be appropriated for by Congress from year to year.[1]

Authority to employ clerks and other employees.
Mar. 3, 1875, c. 129, v. 18, pp. 360, 361, 365; c. 130, ss. 2, 3, v. 18, p. 399.
Sec. 169, R. S.

26. The executive officers of the Government are hereby prohibited from employing any clerk, agent, engineer, draughtsman, messenger watchman, laborer, or other employee, in any of the Executive Departments in the city of Washington, or elsewhere beyond provision made by law.[2] *Sec. 5, act of August 15, 1876 (19 Stat. L., 169).*

Employing clerks, etc., beyond provisions by law.
Sec. 5, Aug. 15, 1876, v. 19, p. 169.

27. No civil officer, clerk, draughtsman, copyist, messenger, assistant messenger, mechanic, watchman, laborer, or other employee shall, after the first day of October next, be employed in any of the Executive Departments, or subordinate bureaus or offices thereof at the seat of Government, except only at such rates and in such numbers, respectively, as may be specifically appropriated for by Congress for such clerical and other personal services for each fiscal year; and no civil officer, clerk, draughtsman, copyist, messenger, assistant messenger, mechanic, watchman, laborer, or other employee shall hereafter be employed at the seat of Government in any Executive Department or subordinate bureau or office thereof or be paid from any appropriation made for contingent expenses, or for any specific or general purpose, unless such employment is authorized and payment therefor specifically provided in the law granting the appropriation, and then only for services actually rendered in connection with and for the purposes of the appropriation from which payment is made, and at the rate of compensation usual and proper for such services.

Employees to be paid from specific appropriations only.
Sec. 4, Aug. 5, 1882, v. 22, p. 255.

---

[1] For authority of chief clerks to administer oaths of office, see the act of August 29, 1890 (26 Stat. L., 371), paragraph 49 post; for statutory duties of the chief clerk of the War Department, see paragraphs 22, 23, and 134 post.

[2] For rules regulating the procurement of services in the several Executive Departments see, in Chapter IV, the title *The Civil Service.*

Civil officers, etc., elsewhere employed, not to be detailed for duty in the District of Columbia.
R. S. 172 repealed.

28. After the first day of October next section one hundred and seventy-two of the Revised Statutes, and all other laws and parts of laws inconsistent with the provisions of this act, and all laws and parts of laws authorizing the employment of officers, clerks, draughtsmen, copyists, messengers, assistant messengers, mechanics, watchmen, laborers, or other employees at a different rate of pay or in excess of the numbers authorized by appropriations made by Congress, be, and they are hereby, repealed; and thereafter all details of civil officers, clerks, or other subordinate employees from places outside of the District of Columbia for duty within the District of Columbia, except temporary details for duty connected with their respective offices, be, and are hereby, prohibited; and thereafter all moneys accruing from lapsed salaries, or from unused appropriations for salaries, shall be covered into the Treasury.[1] *Sec. 4, act of August 5, 1882 (22 Stat. L., 255).*

Prohibition of voluntary service.
May 1, 1874, v. 23, p. 17.

29. Hereafter no Department or officer of the United States shall accept voluntary service for the Government or employ personal service in excess of that authorized by law, except in cases of sudden emergency involving the loss of human life or the destruction of property. *Act of May 1, 1874 (23 Stat. L., 17).*

Civil pension roll prohibited.
Feb. 24, 1899, v. 30, p. 846.

30. The establishment of a civil pension roll, or an honorable service roll, or the exemption of any of the officers, clerks, and persons in the public service from the existing laws respecting employment in such service is hereby prohibited.[2] *Act of February 24, 1899 (30 Stat. L., 846).*

Payment of persons permanently incapacitated.

31. The appropriations herein made for the officers, clerks, and persons employed in the public service shall

---

[1] The act of August 5, 1882 (22 Stat. L. 255), contained the following provisos:

"That the sums herein specifically appropriated for clerical or other force heretofore paid for out of general or specific appropriations may be used by the several heads of Departments to pay such force until the said several heads of Departments shall have adjusted the said force in accordance with the provisions of this act; and such adjustment shall be effected before October first, eighteen hundred and eighty-two. And in making such adjustment the employees herein provided for shall, as far as may be consistent with the interests of the service, be apportioned among the several States and Territories according to population: *Provided further*, That any person performing duty in any capacity as officer, clerk, or otherwise in any Department at the date of the passage of this act who has heretofore been paid from any appropriation made for contingent expenses or for any contingent or general purpose, and whose office or place is specifically provided for herein, under the direction of the head of that Department, may be continued in such office, clerkship, or employment without a new appointment thereto, but shall be charged to the quotas of the several States and Territories from which they are respectively appointed, and nothing herein shall be construed to repeal section 166 of the Revised Statutes of the United States." See also 3 Dig. Dec. 2nd Compt., par. 82.

[2] Section 2 of the act of June 2, 1900 (31 Stat. L., 261), contained a similar requirement.

not be available for the compensation of any persons permanently incapacitated for performing such service.[1] *Act of March 3, 1901 (31 Stat. L., 1009).*

Mar. 3, 1901, v. 31, p. 1009.

CLASSIFICATION OF CLERKS.

Par.
32. Four classes.
33. Examination.
34. Employment of women.

Par.
35. Distribution.
36. Reduction to lower grade.
37. Preference in reduction.

32. The clerks in the Departments shall be arranged in four classes, distinguished as the first, second, third, and fourth classes.

Classification of Department clerks.
Mar. 3, 1853, c. 77, s. 3, v. 10, p. 209; Mar. 3, 1855, c. 175, s. 4, v. 10, p. 669; Aug. 15, 1876, c. 287, s. 3, v. 19, p. 169. **Sec. 163, R. S.**

33. No clerk shall be appointed in any Department in either of the four classes above designated until he has been examined and found qualified by a board of three examiners, to consist of the chief of the Bureau or office into which such clerk is to be appointed and two other clerks to be selected by the head of the Department.[2]

Examinations.
Mar. 3, 1853, c. 97, s. 3, v. 10, p. 209; Mar. 3, 1855, c. 175, s. 4, v. 10, p. 669.
Sec. 164, R. S.

34. Women may, in the discretion of the head of any Department, be appointed to any of the clerkships therein authorized by law, upon the same requisites and conditions, and with the same compensations, as are prescribed for men.

Clerkships open to women.
July 12, 1870, c. 251, s. 2, v. 16, pp. 230, 250.
Sec. 165, R. S.

35. Each head of a Department may, from time to time, alter the distribution among the various bureaus and offices of his Department, of the clerks and other employees allowed by law, except such clerks or employees as may be required by law to be exclusively engaged upon some specific work, as he may find it necessary and proper to do, but all details hereunder shall be made by written order of the head of the Department, and in no case be for a period of time exceeding one hundred and twenty days: *Provided*, That details so made may, on expiration, be renewed from time to time by written order of the head of the Department, in each particular case, for periods of not exceeding one hundred and twenty days. All details heretofore made are hereby revoked, but may be renewed as provided herein. *Sec. 3, act of May 28, 1896 (29 Stat. L., 179).*

Distribution of clerks.
Sec. 3, May 28, 1896, v. 29, p. 179.
Sec. 166, R. S.

---

[1] The acts of February 24, 1899 (30 Stat. L., 846), and April 17, 1900 (31 ibid., 134), contained the same requirement.

[2] For rules regulating appointments in the several Executive Departments in the city of Washington and elsewhere, see the title *The Civil Service* in the chapter entitled PROVISIONS APPLICABLE TO THE SEVERAL CLASSES OF OFFICERS. See also paragraph 25 *ante*.

Reduction to lower grade. Aug. 15, 1876, s. 3, v. 19, p. 169.

36. Whenever, in the judgment of the head of any Department the duties assigned to a clerk of one class can be as well performed by a clerk of a lower class or by a female clerk, it shall be lawful for him to diminish the number of clerks of the higher grade and increase the number of the clerks of the lower grade within the limit of the total appropriation for such clerical service. *Section 3, act of August 15, 1876 (19 Stat. L., 169).*

Preference to discharged soldiers and sailors. *Ibid.*

37. In making any reduction of force in any of the Executive Departments, the head of such Department shall retain those persons who may be equally qualified who have been honorably discharged from the military or naval service of the United States,[1] and the widows and orphans of deceased soldiers and sailors. *Ibid.*

SALARIES.

Par.
38. Rates of pay.
39. Temporary clerks.
40. Extra compensation prohibited.
41. The same.
42. Contingent funds not to be used.

Salaries of persons employed in the Departments. Mar. 3, 1853, c. 97, s. 3, v. 10, pp. 209, 211; Apr. 22, 1854, c. 52, s. 1, v. 10, p. 276; Aug. 18, 1856, Res. 18, v. 11, p. 145; July 23, 1866, c. 208, s. 6, v. 14, p. 207; July 12, 1870, c. 251, s. 3, v. 16, pp. 230, 250. Sec. 167, R. S.

38. The annual salaries of clerks and employees in the Departments, whose compensation is not otherwise prescribed, shall be as follows:

First. To clerks of the fourth class, eighteen hundred dollars.

Second. To clerks of the third class, sixteen hundred dollars.

Third. To clerks of the second class, fourteen hundred dollars.

Fourth. To clerks of the first class, twelve hundred dollars.

Fifth. To the women employed in duties of a clerical character, subordinate to those assigned to clerks of the first class, including copyists and counters, or temporarily employed to perform the duties of a clerk, nine hundred dollars.

Sixth. To messengers, eight hundred and forty dollars.

Seventh. To assistant messengers, seven hundred and twenty dollars.

---

[1] To entitle an honorably discharged soldier to retention in the civil service in preference to a civilian, he must be *equally qualified*, sec. 3, act of August 15, 1876 (19 Stat. L., 169), which must be determined by the head of the Department. Keim *v.* U. S., 33 Ct. Cls., 174.

Eighth. To laborers, seven hundred and twenty dollars.[1]

Ninth. To watchmen, seven hundred and twenty dollars.[1]

Temporary clerks.
Apr. 22, 1854, c. 52, s. 1, v. 10, p. 276.
Sec. 168, R. S.

39. Except when a different compensation is expressly prescribed by law, any clerk temporarily employed to perform the same or similar duties with those belonging to clerks of either class is entitled to the same salary as is allowed to clerks of that class.

Extra compensation to clerks prohibited.
Mar. 3, 1863, c. 97, 211; June 17, 1844, c. 102, s. 1, v. 5, pp. 681, 687; Feb. 28, 1867, Res. 30, s. 2, v. 14, p. 569, s. 3, v. 10, p. 209.
Sec. 170, R. S.

40. No money shall be paid to any clerk employed in either Department at an annual salary, as compensation for extra services, unless expressly authorized by law.

Extra compensation forbidden unless expressly authorized by law.
Aug. 26, 1842, s. 12, v. 5, p. 525.
Sec. 1764, R.S.

41. No allowance or compensation shall be made to any officer or clerk by reason of the discharge of duties which belong to any other officer or clerk in the same or any other Department; and no allowance or compensation shall be made for any extra services whatever which any officer or clerk may be required to perform, unless expressly authorized by law.

Contingent funds, etc., not to be used for employment of services.
July 12, 1870, s. 3, v. 16, p. 250.
Sec. 3682, R.S.

42. No moneys appropriated for contingent, incidental, or miscellaneous purposes shall be expended or paid for official or clerical compensation.[2]

LEAVES OF ABSENCE; SICK LEAVES.

Leaves of absence.
March 15, 1898, s. 7, v. 30, p. 316.

43. The head of any Department may grant thirty days' annual leave with pay in any one year to each clerk or employee:[3] *And provided further*, That where some member of the immediate family of a clerk or employee is afflicted with a contagious disease and requires the care and attendance of such employee, or where his or her presence in the Department would jeopardize the health of fellow-clerks, and in exceptional and meritorious cases,

Sick leaves.

---

[1] The annual acts of appropriation since that of June 15, 1880 (21 Stat. L., 237), have contained provisions fixing the salaries of laborers and watchmen in the Executive Departments at $660 and of charwomen at $240. See section 2, act of April 17, 1900 (31 Stat. L., 133); see also Garlinger *v.* U. S., 30 Ct. Cls., p. 208, and Gordon *v.* U. S., 31 ibid., 254.

[2] Section 4 of the act of April 17, 1900 (31 Stat. L., 134), contains the requirement that "the appropriations herein made for the officers, clerks, and persons employed in the public service shall not be available for the compensation of persons permanently incapacitated for performing such service."

The act of July 1, 1898 (30 Stat. L., 597), contained the requirement that "hereafter no allowance or compensation for clerks or secretaries of officials of the United States retired from active service shall be authorized."

[3] Under the above provision it is discretionary with the heads of the several Executive Departments to grant or refuse leave of absence, and their acts can not be reviewed. Absence without leave is absence without pay; absence with leave is subject to such conditions and limitations as may be imposed. Hurlbut *v.* U. S., 30 Ct. Cls., 166.

LIBRARY OF THE UNIVERSITY OF CALIFORNIA

where a clerk or employee is personally ill, and where to limit the annual leave to thirty days in any one calendar year would work peculiar hardship, it may be extended, in the discretion of the head of the Department, with pay, not exceeding thirty days in any one case or in any one calendar year.

This section shall not be construed to mean that so long as a clerk or employee is borne upon the rolls of the Department in excess of the time herein provided for or granted that he or she shall be entitled to pay during the period of such excessive absence, but that the pay shall stop upon the expiration of the granted leave.[1] *Sec. 7, act of March 15, 1898 (30 Stat. L., 316).*

Sick leave.
July 7, 1898, v. 30, p. 653.

44. Nothing contained in section seven of the act making appropriations for legislative, executive, and judicial expenses of the Government for the fiscal year eighteen hundred and ninety-nine, approved March fifteenth, eighteen hundred and ninety-eight, shall be construed to prevent the head of any Executive Department from granting thirty days' annual leave with pay in any one year to a clerk or employee, notwithstanding such clerk or employee may have had during such year not exceeding thirty days' leave with pay on account of sickness as provided in said section seven. *Act of July 7, 1898 (30 Stat. L., 653).*

Sundays and holidays excluded.
Feb. 24, 1899, s. 4, v. 30, p. 890.

45. The thirty days' annual leave of absence with pay in any one year to clerks and employees in the several Executive Departments authorized by existing law shall be exclusive of Sundays and legal holidays. *Sec. 4, act of February 24, 1899 (30 Stat. L., 890).*

LEGAL HOLIDAYS.

Par.
46. Enumeration, pay, etc.
47. Decoration Day.
48. Labor Day.

Per diem employees of the Government to receive pay for certain holidays.
J. R. No. 5, Jan. 6, 1885, v. 23, p. 516.

46. The employees of the navy-yard, Government Printing Office, Bureau of Printing and Engraving, and all other per diem employees of the Government on duty at Washington, or elsewhere in the United States, shall be allowed the following holidays, to wit: The first day of January, the twenty-second day of February, the fourth day of July, the twenty-fifth day of December, and such days as may be designated by the President as days for national thanksgiving, and shall receive the same pay as on other days.[1] *Joint Res. No. 5, January 6, 1885 (23 Stat. L., 516).*

---

[1] The word "meritorious" as used above is surplusage; the word "exceptional" in the same statute raises a question of fact upon which the Attorney-General can not advise. XX Opin. Att. Gen., 716.

Per diem employees, allowed pay for Decoration Day and Fourth of July. J. R. No. 6, Feb. 23, 1887, v. 24, p. 644.

47. All per diem employees of the Government, on duty at Washington or elsewhere in the United States, shall be allowed the day of each year which is celebrated as "Memorial" or "Decoration Day" and the fourth of July of each year, as holiday, and shall receive the same pay as on other days. *Joint Res. No. 6, February 23, 1887 (24 Stat. L., 644).*

Labor Day to be a legal holiday. June 28, 1894, v. 28, p. 96.

48. The first Monday of September in each year, being the day celebrated and known as Labor's Holiday, is hereby made a legal public holiday, to all intents and purposes, in the same manner as Christmas, the first day of January, the twenty-second day of February, the thirtieth day of May, and the fourth day of July are now made by law public holidays.[2] *Act of June 28, 1894 (28 Stat. L., 96).*

ADMINISTRATION OF OATHS.

Chief clerks of Executive Departments, etc., to administer oath of office free. Aug. 29, 1890, v. 26, p. 371.

49. The chief clerks of the several Executive Departments and of the various bureaus and offices thereof in Washington, District of Columbia, are hereby authorized and directed, on application and without compensation therefor, to administer oaths of office to employees required to be taken on their appointment or promotion. *Act of August 29, 1890 (26 Stat. L., 371).*

No Department officer, etc., to charge fees for oath of office to employees. Aug. 29, 1890, v. 26, p. 371.

50. No officer, clerk, or employee of any Executive Department who is also a notary public or other officer authorized to administer oaths shall charge or receive any fee or compensation for administering oaths of office to employees of such Department required to be taken on appointment or promotion therein. *Act of August 29, 1890 (26 Stat. L., 371.)*

Oaths, when administered by officers, etc. Apr. 10, 1869, Res. No. 15, s. 2, v. 16, p. 55; Mar. 7, 1870, c. 23, v. 16, p. 75; Mar. 2, 1901, s. 3, v. 31, p. 951. Sec. 183, R. S.

51. Any officer or clerk of any of the Departments lawfully detailed to investigate frauds on, or attempts to defraud, the Government, or any irregularity or misconduct of any officer or agent of the United States, and any officer of the Army detailed to conduct an investigation, and the recorder, and, if there be none, the presiding officer of any military board appointed for such purpose, shall have authority to administer an oath to any witness attending to testify or depose in the course of such investigation. *Section 3, act of March 2, 1901 (31 Stat. L., 951).*

---

[1] In the act of January 6, 1895, which provides that "the employees of the navy-yard, Government Printing Office, Bureau of Engraving and Printing, and all other per diem employees" shall be allowed pay for legal holidays, the provision "all other per diem employees" is to be restricted to employees whose employment is similarly permanent or continuous. IV Compt. Dec., 499.

[2] For a requirement in respect to the exclusion of Sundays and legal holidays in the reckoning of annual leaves of absence, see section 4, act of February 24, 1899 (30 Stat. L., 890), paragraph 45, *ante.*

HOURS OF LABOR IN THE EXECUTIVE DEPARTMENTS.

Hours of labor
Mar. 15, 1898, s. 17, v. 30, p. 316.

52. Hereafter it shall be the duty of the heads of the several Executive Departments, in the interest of the public service, to require of all clerks and other employees, of whatever grade or class, in their respective Departments, not less than seven hours of labor each day, except Sundays and days declared public holidays by law or Executive order: *Provided*, That the heads of the Departments may, by special order, stating the reason, further extend the hours of any clerk or employee in their Departments, respectively; but in case of an extension it shall be without additional compensation.[1] *Section 7, act of March 15, 1898 (30 Stat. L., 316).*

Monthly reports.
Extension of hours of labor.
Ibid.

53. Hereafter it shall be the duty of the head of each Executive Department to require monthly reports to be made to him as to the condition of the public business in the several bureaus or offices of his Department at Washington; and in each case where such reports disclose that the public business is in arrears, the head of the Department in which such arrears exist shall require, as provided herein, an extension of the hours of service to such clerks or employees as may be necessary to bring up such arrears of public business.[2] *Ibid.*

CONTINGENT FUNDS.

Par.
54. Purchases, how made.
55. Compensation of employees from, prohibited.
56. Expenditure for newspapers.

Par.
57. The same.
58. Law books, books of reference, etc.
59. Annual reports.
60. Statement of expenditures.

Purchases from contingent funds.
Aug. 26, 1842, c. 202, s. 19, v. 5, p. 527.
Sec. 3683, R. S.

54. No part of the contingent fund appropriated to any Department, bureau, or office, shall be applied to the purchase of any articles except such as the head of the Department shall deem necessary and proper to carry on the business of the Department, bureau, or office, and shall, by written order, direct to be procured.[1]

---

[1] This section operates to repeal section 162, Revised Statutes, in respect to the hours of business in the several Executive Departments. It replaces section 4 of the act of March 3, 1883 (22 Stat. L., 563), in relation to the same subject. This requirement has been held by the Comptroller of the Treasury not to apply to laborers and mechanics whose compensation is not fixed by law or regulations. IV Compt. Dec., 578; see, also, Hurlburt *v.* U. S., 30 Ct. Cls., 16.

[2] For quarterly reports of the condition of business in the several Executive Departments see paragraph 88, *post;* see, also, paragraph 22, *ante.* The above enactment replaces section 4 of the act of March 3, 1883 (22 Stat. L., 531), and section 5 of the act of March 3, 1893 (27 ibid., 675), *in pari materia.*

55. No moneys appropriated for contingent, incidental, or miscellaneous purposes shall be expended or paid for official or clerical compensation.[2]

Not to be expended for services. July 12, 1870, s. 3, v. 16, p. 250. Sec. 3682, R. S.

56. The amount expended in any one year for newspapers, for any Department, except the Department of State, including all the bureaus and offices connected therewith, shall not exceed one hundred dollars. And all newspapers purchased with the public money for the use of either of the Departments must be preserved as files for such Department.

Expenditure for newspapers. Aug. 26, 1842, c. 202, s. 16, v. 5, p. 526. Sec. 192, R. S.

57. No executive officer, other than the heads of Departments, shall apply more than thirty dollars, annually, out of the contingent fund under his control, to pay for newspapers, pamphlets, periodicals, or other books or prints not necessary for the business of his office.

The same. Mar. 3, 1839, s. 3, v. 5, p. 349. Sec. 1779, R. S.

58. Hereafter law books, books of reference, and periodicals for use of any Executive Department, or other Government establishment not under an Executive Department, at the seat of Government, shall not be purchased or paid for from any appropriation made for contingent expenses[3] or for any specific or general purpose unless such purchase is authorized and payment therefor specifically provided in the law granting the appropriation. *Section 3, act of March 15, 1898* (*30 Stat. L., 316*).

Law books, books of reference, etc. Mar. 15, 1898, s. 3, v. 30, p. 316.

---

[1] Section 3683, Revised Statutes, requires that the written order therein mentioned shall be given by the head of the Department before the articles to be paid for from the contingent fund are procured, and a subsequent approval is not sufficient. II Compt. Dec., 1. This section applies only to cases where an appropriation is made in a lump sum for "contingent, incidental, or miscellaneous expenses," or under similar words, and where Congress has specifically designated appropriations for enumerated items as being for "contingent, incidental, or miscellaneous expenses." Ibid., 42. When an item is properly payable from an appropriation for contingent expenses, the discretion of the officer charged with the duty of expending said fund is not subject to review by the accounting officers upon any question as to the necessity or advisability of his expenditures. Ibid., 80. XVIII Opin. Att. Gen., 424.

[2] Section 3682, Revised Statutes, prohibits, absolutely, the use for official or clerical compensation of any money appropriated for contingent, incidental, or miscellaneous purposes. I Compt. Dec., 392; ibid., 410.

[3] The words "contingent expenses," as employed in acts making appropriations, mean such incidental, casual, and unforeseen expenses as are necessary and appropriate to the execution of duties required by law in connection with the object for which the appropriation is made. IV Compt. Dec., 287. There is no discretion conferred upon heads of Departments to use such appropriations for other purposes. Ibid., 287.

The provisions in the act of March 15, 1898, that "hereafter law books, books of reference, and periodicals for the use of any Executive Department, or other Government establishment not under an Executive Department, at the seat of Government, shall not be purchased or paid for from any appropriation made for contingent expenses or for any specific or general purpose, unless such purchase is authorized and payment therefor specifically provided in the law granting the appropriation" does not apply to those branches of the public service located outside of Washington, nor to the Army, which is not a part of the War Department proper. Ibid., 551.

A newspaper is not a periodical within the meaning of the requirement above set forth in the act of March 15, 1898 (30 Stat. L., 316). Ibid., 694.

Annual report of expenditure of contingent funds.
Aug. 26, 1842, c. 202, s. 20, v. 5, p. 527.
Sec. 193, R. S.

59. The head of each Department shall make an annual report to Congress, giving a detailed statement of the manner in which the contingent fund for his Department, and for the bureaus and offices therein, has been expended, giving the names of every person to whom any portion thereof has been paid; and if for anything furnished, the quantity and price; and if for any service rendered, the nature of such service, and the time employed, and the particular occasion or cause, in brief, that rendered such service necessary; and the amount of all former appropriations in each case on hand, either in the Treasury or in the hands of any disbursing officer or agent. And he shall require of the disbursing officers, acting under his direction and authority, the return of precise and analytical statements and receipts of all the moneys which may have been from time to time during the next preceding year expended by them, and shall communicate the results of such returns and the sums total, annually, to Congress.

When submitted.
Mar. 3, 1877, v. 19, p. 294.

60. Hereafter a detailed statement of the expenditure for the preceding year of all sums appropriated for contingent expenses of the independent treasury, or in any Department or bureau of the Government, shall be presented to Congress at the beginning of each regular session. *Act of March 3, 1877 (19 Stat. L., 294).*

REQUISITIONS FOR FUNDS—WARRANTS—ADVANCES.

Requisitions for advances of funds.

61. Every requisition for an advance of money,[1] before being acted on by the Secretary of the Treasury, shall be sent to the proper Auditor for action thereon as required by section twelve of this act.[2]

Warrants.
July 31, 1894, s. 11, v. 28, p. 209.

All warrants, when authorized by law and signed by the Secretary of the Treasury, shall be countersigned by the Comptroller of the Treasury, and all warrants for the payment of money shall be accompanied either by the Auditor's certificate, mentioned in section seven of this act,[3] or by the requisition for advance of money, which certificate or requisition shall specify the particular appropriation to which the same should be charged, instead of being specified on the warrant, as now provided by section thirty-six hundred and seventy-five of the Revised Statutes; and shall also go with the warrant to the Treasurer, who shall return the certificate or requisition to the proper Auditor, with the date and amount of the draft issued indorsed thereon. Requisitions for the payment of money on all audited accounts, or for covering money into the Treasury, shall not hereafter be required. And requisitions for advances of money shall not be countersigned by the Comptroller of the Treasury. *Sec. 11, act of July 31, 1894 (28 Stat. L., 209).*

---

[1] Section 8 of the act of July 31, 1894 (28 Stat. L., 207), has no application to questions respecting the advance of funds which, under this section, are subject to the decision of the Auditor, with a review by the Secretary of the Treasury. 1 Compt. Dec., 409.

[2] Sec. 12, act of July 31, 1894 (28 Stat. L., 209).

[3] Sec. 7, ibid., 206.

ESTIMATES.

Par.
62. Book of Estimates.
63. Statement of appropriations.
64. Date of submission of estimates.
65. Estimates for deficiencies.
66. Outstanding appropriations.
67. Manner of communicating estimates.
68. Printing and binding.
69. Salaries.
70. Report of claims allowed.

Par.
71. Public works.
72. Additional explanations.
73. Reports of rented buildings.
74. The same, in the District of Columbia.
75. Statement of sales, etc.
76. River and harbor works.
77. Condition of business.
78. Report of employees who are below a a fair standard of efficiency.

62. All annual estimates for the public service shall be submitted to Congress through the Secretary of the Treasury, and shall be included in the Book of Estimates prepared under his direction.

Estimates to be submitted to Congress.
Sept. 2, 1789, c. 12, s. 2, v. 1, p. 65; Mar. 10, 1800, c. 58, v. 2, pp. 79, 80; Jan. 7, 1846, Res. 2, v. 9, p. 108; Aug. 4, 1854, c. 242, s. 15, v. 10, p. 573; May 18, 1865, c. 85, s. 4, v. 14, p. 49; June 20, 1874, c. 328, v. 18, pp. 96, 109, 111; Mar. 3, 1875, c. 129, v. 18, pp. 355, 370; Aug. 15, 1876, c. 289, s. 4, v. p. 200. **Sec. 3669, R. S.**

63. The Secretary of the Treasury shall annex to the annual estimates of the appropriations required for the public service a statement of the appropriations for the service of the year, which may have been made by former acts.

Statements to accompany estimates.
May 1, 1820, c. 52, s. 8, v. 3, p. 568; June 20, 1874, c. 328, v. 18, p. 96.
Sec. 3670, R.S.

64. Hereafter it shall be the duty of the heads of the several Executive Departments, and of other officers authorized or required to make estimates, to furnish to the Secretary of the Treasury, on or before the fifteenth day of October of each year, their annual estimates for the public service, to be included in the Book of Estimates prepared by law under his direction, and in case of failure to furnish estimates as herein required it shall be the duty of the Secretary of the Treasury to cause to be prepared in the Treasury Department, on or before the first day of November of each year, estimates for such appropriations as in his judgment shall be requisite in every such case, which estimates shall be included in the Book of Estimates prepared by law under his direction for the consideration of Congress. *Sec. 5, act of March 3, 1901 (31 Stat. L., 1009).*

Annual estimates Mar. 3, 1901, s. 5, v. 31, p. 1009.

Estimates of appropriations and for deficiencies to be hereafter transmitted to Congress through the Secretary of the Treasury. July 7, 1884, s. 2, v. 23, p. 254.

65. Hereafter all estimates of appropriations and estimates of deficiencies in appropriations intended for the consideration and seeking the action of any of the committees of Congress shall be transmitted to Congress through the Secretary of the Treasury, and in no other manner; and the said Secretary shall first cause the same to be properly classified, compiled, indexed, and printed, under the supervision of the chief of the division of warrants, estimates, and appropriations of his Department. *Sec. 2, act of July 7, 1884 (23 Stat. L., 254).*

Amount of outstanding appropriations to be designated.
June 2, 1858, c. 82, s. 2, v. 11, p. 308.
Sec. 3665, R.S.

66. The head of each Department, in submitting to Congress his estimates of expenditures required in his Department during the year then approaching, shall designate not only the amount required to be appropriated for the next fiscal year, but also the amount of the outstanding appropriation, if there be any, which will probably be required for each particular item of expenditure.

Manner of communicating estimates.
Aug. 26, 1842, c. 202, s. 14, v. 5, p. 525; Mar. 3, 1875, c. 129, s. 3, v. 18, p. 370.
Sec. 3960, R.S.

67. The heads of Departments, in communicating estimates of expenditures and appropriations to Congress, or to any of the committees thereof, shall specify, as nearly as may be convenient, the sources from which such estimates are derived, and the calculations upon which they are founded, and shall discriminate between such estimates as are conjectural in their character and such as are framed upon actual information and applications from disbursing officers. They shall also give references to any law or treaty by which the proposed expenditures are, respectively, authorized, specifying the date of each, and the volume and page of the Statutes at Large, or of the Revised Statutes, as the case may be, and the section of the act in which the authority is to be found.[1]

Estimates for printing and binding.
May 8, 1872, c. 140, s. 2, v. 17, p. 82.
Sec. 3661, R.S.

68. The head of each of the Executive Departments, and every other public officer who is authorized to have printing and binding done at the Congressional Printing Office for the use of his Department or public office, shall include in his annual estimate for appropriations for the next fiscal year such sum or sums as may to him seem

---

[1] The policy of Congress in respect to annual appropriations is contained in sections 3660, 3664, 3665, 3675, 3678, 3679, and 3690 of the Revised Statutes. A reading of their provisions will show conclusively, we think, that Congress has restricted in every possible way the expenditures and expenses and liabilities of the Government, so far as executive officers are concerned, to the specific appropriations of each fiscal year. Wilder *v.* U. S., 16 Ct. Cls., 528, 543. The estimates must relate to expenditures based upon the enactments of Congress and not to the payment of damages. Pitman *v.* U. S., 20 ibid., 253, 256. And to expenditures for the public service during the ensuing fiscal year. McCallum *v.* United States, 17 ibid., 92; Conn. Mut. Life Ins. Co. *v.* U. S., 21 ibid., 195, 200.

necessary for printing and binding, to be executed unde the direction of the Congressional Printer.

69. All estimates for the compensation of officers authorized by law to be employed shall be founded upon the express provisions of law, and not upon the authority of executive distribution.[1]

Estimates for salaries.
Mar. 3, 1855, c. 175, s. 8, v. 10, p. 670.
Sec. 3662, R. S.

70. The Secretary of the Treasury shall, at the commencement of each session of Congress, report the amount due each claimant whose claim has been allowed in whole or in part, to the Speaker of the House of Representatives and the President of the Senate, who shall lay the same before their respective houses for consideration. *Sec. 2, Act of July 7, 1884 (23 Stat. L., 254).*

Report of claims allowed.
July 7, 1884, s. 2, v. 23, p. 254.

71. Whenever any estimate submitted to Congress by the head of a Department asks an appropriation for any new specific expenditure, such as the erection of a public building, or the construction of any public work, requiring a plan before the building or work can be properly completed, such estimate shall be accompanied by full plans and detailed estimates of the cost of the whole work. All subsequent estimates for any such work shall state the original estimated cost, the aggregate amount theretofore appropriated for the same, and the amount actually expended thereupon, as well as the amount asked for the current year for which such estimate is made. And if the amount asked is in excess of the original estimate, the full reasons for the excess and the extent of the anticipated excess shall be also stated.

Estimates for public works.
June 17, 1844, c. 105, s. 2, v. 5, p. 693; Mar. 3, 1855, c. 175, s. 8, v. 10, p. 670; Feb. 27, 1877, v. 19, p. 249.
Sec. 3663, R. S.

72. Whenever the head of a Department, being about to submit to Congress the annual estimates of expenditures required for the coming year, finds that the usual items of

Additional explanations required.
Ibid.
Sec. 3664, R. S.

---

[1] A statute which fixes the annual salary of a public officer at a designated sum, without limitation as to time, is not abrogated by subsequent enactments appropriating a less amount for his services for a particular fiscal year, but containing no words which expressly or impliedly repeal it. U. S. *v.* Langston, 118 U. S., 389. It is otherwise, however, when the sum appropriated is "in full compensation" for the salary of a particular officer, in which case the earlier act is suspended for the time covered by the appropriation. U. S. *v.* Fisher, 109 U. S., 143; U. S. *v.* Mitchell, ibid., 146. A salary that is established by statute can not be increased nor diminished by executive officers. It is not a subject of contract between such officers. The incumbent of an office is entitled to the salary attached thereto by law, and, if he receives a less sum from disbursing officers, he can claim and receive the balance. Dyer *v.* U. S., 20 Ct. Cls., 166, 171; Adams *v.* U. S., ibid., 115. Such recovery may be had though, by the terms of his appointment, he was to receive less and though he may have been compelled to execute a receipt in full therefor. Ibid.

It is not within the power of the head of an Executive Department to reduce or change the salary of an officer which Congress has specifically prescribed; and an agreement to that effect, being contrary to public policy, will not be enforced or given effect as an estoppel. Miller *v.* U. S., 103, Fed. Rep., 413. But, for express authority to reduce the salaries of clerks, see section 3, act of August 15, 1876 (19 Stat. L., 169), paragraph 36 ante.

such estimates vary materially in amount from the appropriation ordinarily asked for the object named, and especially from the appropriation granted for the same objects for the preceding year, and whenever new items not theretofore usual are introduced into such estimates for any year, he shall accompany the estimates by minute and full explanations of all such variations and new items, showing the reasons and grounds upon which the amounts are required, and the different items added.

Report to Congress, in annual estimates, of buildings rented, etc.
Mar. 3, 1883, v. 22, p. 552.

73. It shall be the duty of the heads of the several Executive Departments to submit to Congress each year, in the annual estimates of appropriations, a statement of the number of buildings rented by their respective Departments, the purposes for which rented, and the annual rental of each. *Act of March 3, 1883 (22 Stat. L., 552).*

Rented buildings in the District of Columbia.
July 1, 1892, v. 27, p. 183.

74. Hereafter it shall be the duty of the Secretary of the Treasury to cause to be prepared and submitted to Congress each year, in the annual Book of Estimates of appropriations, a statement of the buildings rented within the District of Columbia for the use of the Government, the purposes for which rented, and the annual rental of each.[1] *Act of July 16, 1892 (27 Stat. L., 183).*

Statement of proceeds of sales of old material.
May 8, 1872, c. 140, s. 5, v. 17, p. 83; Feb. 27, 1877, c. 69, v. 19, p. 249.
Sec. 3672, R. S.

75. A detailed statement of the proceeds of all sales of old material, condemned stores, supplies, or other public property of any kind except materials, stores, or supplies sold to officers and soldiers of the Army, or to exploring or surveying expeditions authorized by law shall be included in the appendix to the Book of Estimates.

River and harbor works.
June 4, 1897, v. 30, p. 48.

76. Hereafter the Secretary of War shall annually submit estimates in detail for river and harbor improvements required for the ensuing year to the Secretary of the Treasury to be included in, and carried into, the sum total of the Book of Estimates. *Act of June 4, 1897 (30 Stat. L., 48).*

Condition of business.
March 2, 1895, s. 7, v. 28, p. 808.

77. It shall be the duty of the head of each Executive Department or other Government establishment in the city of Washington to submit to the first regular session of the Fifty-fourth Congress, and annually thereafter, in the annual Book of Estimates, a statement as to the condition of business in his Department or other Government establishment, showing whether any part of the same is in arrears, and, if so, in what divisions of the respective

---

[1] For statutory provisions in respect to the renting of buildings in the District of Columbia see paragraphs 93*a* and 94 *post*. See, also, the act of March 3, 1887 (24 Stat. L., 509).

bureaus and offices of his Department or other Government establishment such arrears exist, the extent thereof, and the reasons therefor, and also a statement of the number and compensation of employees appropriated for in one bureau or office who have been detailed in another bureau or office for a period exceeding one year. *Sec. 7, Act of March 2, 1895 (28 Stat. L., 808).*

Report of employees below a fair standard of efficiency.
July 11, 1890, s. 7, v. 26, p. 268.

78. It shall be the duty of the heads of the several Executive Departments of the Government to report to Congress each year, in the annual estimates, the number of employees in each bureau and office and the salaries of each who are below a fair standard of efficiency.[1] *Section 2, Act of July 11, 1890 (26 Stat. L., 268).*

PROCUREMENT OF SUPPLIES; CONTRACTS AND PURCHASES

Par.
79. Advertising.
80–81. Contracts and purchases; Proposals.
Par.
82. Contracts for stationery.
83–85. Inspection of fuel in the District of Columbia.

ADVERTISING.

The same.
Jan. 21, 1881, v. 21, p. 317.
Sec. 3828, R. S.

79. That all advertising required by existing laws to be done in the District of Columbia by any of the Departments of the Government shall be given to one daily and one weekly newspaper of each of the two principal political parties and to one daily and one weekly neutral newspaper: *Provided*, That the rates of compensation for such service shall in no case exceed the regular commercial rate of the newspapers selected; nor shall any advertisement be paid for unless published in accordance with section thirty-eight hundred and twenty-eight of the Revised Statutes. *Act of January 21, 1881 (21 Stat. L., 317).*

CONTRACTS AND PURCHASES; PROPOSALS.

Scope of enactment.

80. The act entitled "An Act to amend section thirty-seven hundred and nine of the Revised Statutes relating to contracts for supplies[2] in the Departments at Washing-

---

[1] Section 7, of the act of March 2, 1895 (28 Stat. L., 808), paragraph 77 *ante*, requires reports to be submitted to Congress as to the condition of business in the several Executive Departments, of any arrears that may exist, with the reasons therefor, and a statement of detailed employees.

[2] The word "supplies," as used in section 3709 of the Revised Statutes, evidently has reference to those things which the well-known needs of the public service will from time to time require in its different branches for its successful and efficient administration, and the statute was intended to afford the Government the pecuniary benefits, as well as the protection against fraud and favoritism, which open and honest competition is always likely to secure. It could not have been in the mind

April 21, 1894 v. 28, p. 62. ton," approved January twenty-seven, eighteen hundred
Provisions limited. and ninety-four, is hereby so amended that the provisions
Sec. 3709, R. S. thereof shall apply only to advertisements for proposals
for fuel, ice, stationery, and other miscellaneous supplies

---

of the lawmaking power to require that purchases could only be made after advertisement of small articles which may occasionally be needed, and where in many cases the cost of advertising itself would exceed the value of the article purchased. It can not be said that such cases are governed by the emergency provision in the statute, for there may be, and are, many instances where the officer could not truthfully certify that immediate delivery was necessary. (3 Dig. 2nd Compt. Dec., p. 288.)

The act of March 2, 1861 (sec. 3709, R. S.), while requiring such advertisement, as the general rule invests the officer charged with the duty of procuring supplies or services with a discretion to dispense with advertising, if the exigencies of the public service require immediate delivery or performance. It is too well settled to admit of dispute at this day that, where there is a discretion of this kind conferred on an officer or board of officers, and a contract is made in which they have exercised that discretion, the validity of the contract can not be made to depend on the degree of wisdom or skill which may have accompanied its exercise. U. S. *v.* Speed, 8 Wall., 77, 83; Childs *v.* U. S., 4 Ct. Cls., 176; Mason *v.* U. S., 4 Ct. Cls., 495; Wentworth *v.* U. S., 5 Ct. Cls., 302. See, also, III Compt. Dec., 175, 314, 470; II ibid., 373, 632.

Section 3709, Revised Statutes, provides, generally, that the making of public contracts for supplies, etc., shall be preceded by an advertising for proposals "when the public exigencies do not require the immediate delivery of the articles or performance of the service." Exigencies growing out of a state of war, or hostilities with Indians, were probably mainly had in view, and it is exigencies of this class which have been considered in the adjudged cases in the Supreme Court and Court of Claims. (*a*) It is clear, however, that other exigencies may exist requiring that contracts or purchases be made at once or without the delay incident to advertising for proposals. Thus a loss of stores, structures, etc., on hand, caused by an *actus Dei* or *vis major*, as fire, storm, freshet, or a sudden riot or violent disorder; or a loss of supplies occasioned by the neglect of military subordinates in charge; or a failure of a contractor to fulfill a contract for supplies, transportation, or other service, might properly be regarded as constituting an "exigency" under the statute, if of such magnitude or injurious consequence to the Army as to necessitate an immediate making good of the deficiency. (*b*) The general rule, however, of the statute, in requiring a notice and invitation to the public as a preliminary to the awarding of a contract, is founded upon a sound and well-considered public policy, and exceptions thereto, especially in time of peace, should be recognized as admissible only where, if the rule were strictly complied with, the public interests would manifestly be most seriously prejudiced. (*c*)

For section 3709 of the Revised Statutes, of which the following paragraphs are amendments, see paragraph 81, post. For further annotation of section 3709, Revised Statutes, as amended by the act of January 27, 1894 (28 Stat. L., 33), see paragraph 81, post.

---

[a] See U. S. *v.* Speed, 8 Wallace, 83; Reeside *v.* U. S., 2 Ct. Cls., 1; Mowry *v.* U. S., ibid., 68; Stevens *v.* U. S., ibid., 95; Floyd *v.* U. S., ibid., 429; Crowell *v.* U. S., ibid., 501; Baker *v.* U. S., 3 ibid., 343; Henderson *v.* U. S., 4 ibid., 75; Childs *v.* U. S., ibid., 176; Wentworth *v.* U. S., 5 ibid., 302; Wilcox *v.* U. S., ibid., 386; Cobb *v.* U. S., 7 ibid., 471, and 9 ibid., 291; Thompson *v.* U. S., ibid., 187; McKee *v.* U. S., 12 ibid., 505.

[b] See G. O. 10 of 1879, §§ 22–25, pp. 14–15; do. 72, id., p. 52; do. 40 of 1880, p. 58; also McKee *v.* United States, 12 Ct. Cls., 529–530.

[c] As to the authority who is to decide whether there exists such an exigency as is contemplated by the statute, the Supreme Court, in the United States *v.* Speed, 8 Wallace, 83, has held that it is "the officer charged with the duty of procuring supplies or services who is invested with this discretion." This description is rather general, nor is the term "the purchasing officer," by which the Court of Claims explains it, in Thompson *v.* United States, 9 Ct. Cls., 196, a much more precise definition. It is clear, however, that a subordinate officer charged with the duty of being the immediate representative of the United States in a contract or purchase should not, in general, venture to dispense with advertising, on the theory of the existence of a public exigency, in the absence of instructions or orders from a proper superior. Nor, on the other hand, will a superior officer, in entering into a contract for his command or branch of the service, properly assume that an "exigency" exists authorizing him to dispense with the statutory forms, when the period is time of peace and no imperative necessity exists for the immediate delivery of the supplies or performance of the service proposed to be contracted for. It is to be noted that the cases both of Speed and Thompson related to contracts entered into during the late war. In the instructive opinions of the Attorney-General on the "Fifteen per cent contracts," of April 27 and May 3, 1877 (XV Opins., 235, 253), it is held that the "exigency" contemplated by the statute can be one of *time* only, and that it can be regarded as existing only where an *immediate* delivery or performance is required by a public necessity.

to be purchased at Washington for the use of the Executive Departments and other Government establishments therein named; and no advertisements made or contracts awarded or to be awarded thereon since January twenty-seven, eighteen hundred and ninety-four, in accordance with the laws in force prior to said date, shall be declared to be illegal or invalid for noncompliance with said law of January twenty-seventh, eighteen hundred and ninety-four. *Act of April 21, 1894 (28 Stat. L., 62).*

Contracts, etc., not invalid.

81. The advertisement for such proposals shall be made by all the Executive Departments, including the Department of Labor, the United States Fish Commission, the Interstate Commerce Commission, the Smithsonian Institution, the Government Printing Office, the government of the District of Columbia, and the superintendent of the State, War, and Navy building, except for paper and materials for use of the Government Printing Office, and materials used in the work of the Bureau of Engraving and Printing, which shall continue to be advertised for and purchased as now provided by law, on the same days and shall each designate two o'clock post meridian of such days for the opening of all such proposals in each Department and other Government establishment in the city of Washington; and the Secretary of the Treasury shall designate the day or days in each year for the opening of such proposals and give due notice thereof to the other Departments and Government establishments. Such proposals shall be opened in the usual way and schedules thereof duly prepared and, together with the statement of the proposed action of each Department and Government establishment thereon, shall be submitted to a board, consisting of one of the Assistant Secretaries of the Treasury and Interior Departments and one of the Assistant Postmasters-General, who shall be designated by the heads of said departments and the Postmaster-General, respectively, at a meeting to be called by the official of the Treasury Department, who shall be chairman thereof, and said board shall carefully examine and compare all the proposals so submitted and recommend the acceptance or rejection of any or all the proposals. And if any or all of such proposals shall be rejected, advertisements for proposals shall again be invited and proceeded with in the same manner. *Sec. 1, act of January 27, 1894 (28 Stat. L., 33).*

Advertisements for all the Departments to be on the same day. Sec. 1, Jan. 27, 1894, v. 28, p. 33. Sec. 3709, R. S.

Time for opening bids to be the same.

Readvertisement of rejected bids.

PURCHASES OF STATIONERY.

Contracts for stationery, etc., limited to one year.
Jan. 31, 1868, Res. No. 8, v. 15, p. 246.
Sec. 3735, R.S.

82. It shall not be lawful for any of the Executive Departments to make contracts for stationery or other supplies for a longer term than one year from the time the contract is made.[1]

INSPECTION OF FUEL.

Inspection of fuel in District of Columbia.
Appointment of inspectors, etc.
Mar. 15, 1898, s. 6, v. 30, p. 316.
Sec. 3711, R.S.

83. It shall not be lawful for any officer or person in the civil, military, or naval service of the United States in the District of Columbia to purchase anthracite or bituminous coal or wood for the public service except on condition that the same shall, before delivery, be inspected and weighed or measured by some competent person to be appointed by the head of the Department or chief of the branch of the service for which the purchase is made from among the persons authorized to be employed in such Department or branch of the service.

* * * * *

The person appointed under this section shall ascertain that each ton of coal weighed by him shall consist of two thousand two hundred and forty pounds, and that each cord of wood to be so measured shall be of the standard measure of one hundred and twenty-eight cubic feet. Each load or parcel of wood or coal weighed and measured by him shall be accompanied by his certificate of the number of tons or pounds of coal and the number of cords or parts of cords of wood in each load or parcel.[2] *Sec. 6, act of March 15, 1898* (*30 Stat. L., 316*).

Appointments of weighers, etc., to be certified to accounting officer.
Sec. 2, *ibid.*
Sec. 3712, R.S.

84. The proper accounting officer of the Treasury shall be furnished with a copy of the appointment of each inspector, weigher, and measurer appointed under the preceding section. *Sec. 2, ibid.*

No payments for fuel, etc., without certificate.
Ibid.
Sec. 3713, R.S.

85. It shall not be lawful for any accounting officer to pass or allow to the credit of any disbursing officer in the District of Columbia any money paid by him for purchase of anthracite or bituminous coal or for wood, unless the voucher therefor is accompanied by a certificate of the proper inspector, weigher, and measurer that the quantity paid for has been determined by such officer. *Ibid.*

---

[1] For statutory requirements in reference to the purchase, by the Post-Office Department, of envelopes for the use of the several Executive Departments, see paragraph 328, *post*, section 96, act of January 12, 1895 (28 Stat. L., 624).

[2] See also, for further statutory provisions on this subject, the act of June 14, 1878 (20 Stat. L., 131), and sections 12, 13, 14, and 15 of the act of March 2, 1895 (28 Stat. L., 813), and IV Compt. Dec., 585.

ANNUAL REPORTS.

Par.
86. Time of making.
87. Report of clerks employed.
88. Condition of business.
89. Inefficient clerks.

Par.
90. When to be furnished to printer.
91. Exclusion of certain matter.
92. Penalty for failure to make reports.

Time of making annual reports.
See all acts requiring reports.
Sec. 195, R. S.

86. Except where a different time is expressly prescribed by law, the various annual reports required to be submitted to Congress by the heads of Departments shall be made at the commencement of each regular session, and shall embrace the transactions of the preceding year.

Report of clerks employed.
Aug. 26, 1842, c. 202, s. 11, v. 5, p. 525.
Sec. 194, R. S.

87. The head of each Department shall make an annual report to Congress of the names of the clerks and other persons that have been employed in his Department and the offices thereof; stating the time that each clerk or other person was actually employed, and the sums paid to each; also, whether they have been usefully employed; whether the services of any of them can be dispensed with without detriment to the public service, and whether the removal of any individuals, and the appointment of others in their stead, is required for the better dispatch of business.

Report of condition of business; arrears.
Mar. 15, 1898, s. 7, v. 30, p. 316.

88. Hereafter it shall be the duty of the head of each Executive Department, or other Government establishment at the seat of Government, not under an Executive Department, to make at the expiration of each quarter of the fiscal year a written report to the President as to the condition of the public business in his Executive Department or Government establishment, and whether any branch thereof is in arrears. *Sec. 7, act of March 15, 1898 (30 Stat. L., 316).*

Report of number of employees who are below a fair standard of efficiency.
Sec. 2, July 11, 1890, v. 26, p. 268.

89. It shall be the duty of the heads of the several Executive Departments of the Government to report to Congress each year in the annual estimates the number of employees in each bureau and office and the salaries of each who are below a fair standard of efficiency.[1] *Sec. 2, act of July 11, 1890 (26 Stat. L., 268).*

Department reports, when to be furnished to printer.

90. The head of each Department, except the Department of Justice, shall furnish to the Congressional Printer

---

[1] For reports to be rendered by the Secretary of War, as such, see the chapter entitled THE DEPARTMENT OF WAR; for reports in respect to the expenditures of contingent funds, see paragraphs 59 and 60, *ante*. Section 73 of the act of January 12, 1895, contains the requirement that "no report, document, or publication of any kind distributed by or from an Executive Department or bureau of the Government shall contain any notice that the same is sent with 'the compliments' of an officer of the Government, or with any special notice that it is so sent, except that notice that it has been sent, with a request for an acknowledgment of its receipt, may be given." See, also, the act of March 3, 1893 (27 Stat L., 572).

June 25, 1864, c. 155, ss. 1, 3, v. 13, pp. 184, 5; June 22, 1870, c. 150, s. 12, v. 16, p. 164.
Sec. 196, R. S.

copies of the documents usually accompanying his annual report, on or before the first day of November in each year, and a copy of his annual report on or before the third Monday of November in each year.

Reports to be examined and maps, illustrations, etc., to be excluded.
Aug. 30, 1890, v. 26, p. 411.

91. The heads of the Executive Departments, before transmitting their annual reports to Congress, the printing of which is chargeable to this appropriation, shall cause the same to be carefully examined, and shall exclude therefrom all matter, including engravings, maps, drawings, and illustrations, except such as they shall certify in their letters transmitting such reports to be necessary and to relate entirely to the transaction of the public business. *Act of August 30, 1890 (26 Stat. L., 411).*

Penalty for failure to make reports.
July 18, 1866, s. 42, v. 14, p. 188.
Sec. 1780, R. S.

92. Every officer who neglects or refuses to make any return or report which he is required to make at stated times by any act of Congress or regulation of the Department of the Treasury, other than his accounts, within the time prescribed by such act or regulation, shall be fined not more than one thousand dollars and not less than one hundred.[1]

INVENTORIES OF PROPERTY.

Inventories of property.
July 15, 1870, c. 300, s. 1, v. 16, p. 364; Feb. 27, 1877, c. 69, v. 19, p. 241.
Sec. 197, R. S.

92*a*. The Secretary of State, the Secretary of the Treasury, the Secretary of the Interior, the Secretary of War, the Secretary of the Navy, the Postmaster-General, the Attorney-General, and Commissioner of Agriculture shall keep, in proper books, a complete inventory of all the property belonging to the United States in the buildings, rooms, offices, and grounds occupied by them, respectively, and under their charge, adding thereto, from time to time, an account of such property as may be procured subsequently to the taking of such inventory, as well as an account of the sale or other disposition of any of such property, except supplies of stationery and fuel in the public offices and books, pamphlets, and papers in the Library of Congress.

---

[1] The following statements in the nature of reports are required by statute to be submitted to the Secretary of the Treasury, to be by him embodied in the annual Book of Estimates: (a) Statement of the number of rented buildings in the District of Columbia (act of July 16, 1892, 27 Stat. L., 183; paragraph 74, *ante*); (b) statement of proceeds of sales of old materials, condemned stores, etc., sec. 3672, Revised Statutes, paragraph 75, *ante*; (c) statement of the condition of business in the several Executive Departments and of arrears thereof, sec. 7, act of March 2, 1895 (28 ibid., 808); paragraph 77, *ante*; (d) statement of the number of employees who are below a fair standard of efficiency, sec. 2, act of July 11, 1890 (26 ibid., 268); paragraph 78, *ante*).

The heads of the several Executive Departments are also required to cause monthly reports of the public business to be made and submitted to them, showing the condition of the public business in their respective Departments. Section 174, Revised Statutes, and section 7, act of March 15, 1898 (30 Stat. L., 216), paragraphs 22 and 53, *ante*.

THE OFFICIAL REGISTER.

The Official Register.
Jan. 12, 1895, s. 43, v. 28, p. 601.

93. To enable the officer charged with the duty of preparing the Official Register of the United States to publish the same, the Secretary of the Senate, the Clerk of the House of Representatives, the head of each Executive Department of the Government, and the chief of each and every bureau, office, commission, or institution not embraced in an Executive Department, in connection with which salaries are paid from the Treasury of the United States, shall, on the first day of July in each year in which a new Congress is to assemble, cause to be filed with the Secretary of the Interior a full and complete list of all officers, agents, clerks, and other employees of said Department, bureau, office, commission, or institution connected with the legislative, executive, or judicial service of the Government, or paid from the United States Treasury, including military and naval officers of the United States, cadets, and midshipmen.

Said lists shall exhibit the salary, compensation, and emoluments allowed to each of said officers, agents, clerks, and other employees, the State or country in which he was born, the State or Territory and Congressional district and county of which he is a resident and from which he was appointed to office, and where employed.

A list of the names, force, and condition of all ships and vessels belonging to the United States, and when and where built, shall also be filed with the Secretary of the Interior by the heads of the Departments having supervision of such ships and vessels, for incorporation in the Official Register. *Sec. 43, act of January 12, 1895 (28 Stat. L., 601).*

MISCELLANEOUS REQUIREMENTS.

Par.
93*a*. Restriction on renting buildings in the District of Columbia.
94. The same.
95. Recording clocks prohibited.
96. Remains of deceased employees.
97. Draping public buildings in mourning prohibited.
98. Closing Departments for death of ex-officers prohibited.

Par.
99. Official postage stamps for use of Departments.
100. Penalty envelopes.
101. Telegraph connecting the Capitol with the Executive Departments.
102. The same.

No contracts to be made for rent of any building in Washington without appropriation therefor, etc.

93a. Hereafter no contract shall be made for the rent of any building, or part of any building, in Washington, not now in use by the Government, to be used for the purposes of the Government, until an appropriation therefor shall

June 22, 1874, v. 18, p. 144.

have been made in terms by Congress.[1] *Act of June 22, 1874 (18 Stat. L., 144).*

Renting other buildings; restriction.
Aug. 5, 1882, v. 22, p. 241.

94. Where buildings are rented for public use in the District of Columbia, the Executive Departments are authorized, whenever it shall be advantageous to the public interest, to rent others in their stead: *Provided.* That no increase in the number of buildings now in use, nor in the amounts paid for rents, shall result therefrom. *Act of August 5, 1882 (22 Stat. L., 241).*

Recording clocks prohibited.
Feb. 24, 1899, v. 30, p. 846.

95. No money appropriated by this act shall be used for expense of repairing recording clocks used for recording time of clerks or other employees in any of the Executive Departments at Washington, nor shall there thereafter be used in any of the Executive Departments at Washington any such recording clocks.[1] *Act of February 24, 1899 (30 Stat. L., 846).*

Transportation of remains of deceased employees not authorized.
June 7, 1897, v. 30, p. 86.

96. Hereafter the heads of Departments shall not authorize any expenditure in connection with transportation of remains of deceased employees, except when otherwise specifically provided by law. *Act of June 7, 1897, (30 Stat. L., 86).*

Draping public buildings in mourning prohibited.
Sec. 3, Mar. 3, 1893, v. 27, p. 715.

97. Hereafter no building owned, or used for public purposes, by the Government of the United States, shall be draped in mourning and no part of the public fund shall be used for such purposes. *Sec. 3, act of March 3, 1893 (27 Stat. L., 715).*

Closing Departments for deceased ex-officials prohibited.
Sec. 4, Mar. 3, 1893, v. 27, p. 715,

98. Hereafter the Executive Departments of the Government shall not be closed as a mark to the memory of any deceased ex-official of the United States. *Sec. 4, act of March 3, 1893 (27 Stat. L., 715).*

Official postage stamps for departmental use.
Sec. 2, Mar. 3, 1883, v. 22, p. 563.

99. The Secretaries, respectively, of the Departments of State, of the Treasury, War, Navy, and of the Interior, and the Attorney-General, are authorized to make requisitions upon the Postmaster-General for the necessary amount of official postage stamps for the use of their Departments, not exceeding the amount stated in the estimates submitted to Congress; and upon presentation of proper vouchers therefor at the Treasury, the amount thereof shall be credited to the appropriation for the service of the Post-Office Department for the same fiscal year.[2] *Sec. 2, act of March 3, 1883 (22 Stat. L., 563).*

Penalty envelopes for inclosure of answers to official communications.
Sec. 2, *ibid.*

100. And it shall be the duty of the respective Departments to inclose to Senators, Representatives, and Delegates in Congress, in all official communications requiring

---

[1] The act of July 7, 1898 (30 Stat. L., 652), contained a similar requirement.

[2] This enactment replaces section 198, Revised Statutes, *in pari materia.*

answers, or to be forwarded to others, penalty envelopes addressed as far as practicable, for forwarding or answering such official correspondence.[1] *Sec. 2, act of March 3, 1883 (22 Stat. L., 563).*

TELEGRAPH CONNECTING THE CAPITOL WITH THE EXECUTIVE DEPARTMENTS.

Supervision of Government telegraph.
Feb. 4, 1874, v. 18, p. 14.

101. The lines of telegraph, connecting the Capitol with the various Departments in Washington, constructed under and by virtue of the act of Congress approved March third, eighteen hundred and seventy-three, entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and seventy-four, and for other purposes," be, and the same are hereby, placed under the supervision of the officer in charge of the public buildings and grounds; and that the said officer be authorized and empowered to make rules and regulations for the working of said lines. And the Secretary or head of each Executive Department, and the Congressional Printer, are hereby authorized to detail one person from their present force of employees to operate the instruments in said Departments and Printing Office, and each House of Congress may provide for the employment of an operator in their respective wings of the Capitol, at a compensation not exceeding one hundred dollars per month, during the sessions of Congress. *Act of February 4, 1874 (18 Stat. L., 14).*

Operators.

Use of telegraph restricted.
Mar. 7, 1874, v. 18, p. 20.

102. Said lines of telegraph shall be for the use only of Senators, Members of Congress, Judges of the United States courts, and officers of Congress and of the Executive Departments, and solely on public business. *Act of March 7, 1874 (18 Stat. L., 20).*

DESTRUCTION, FORGERY, ETC., OF PUBLIC RECORDS.

Destroying, etc., public records.
Feb. 26, 1853, c. 81, s. 4, v. 10, p. 170.
Sec. 5403, R.S.

103. Every person who willfully destroys or attempts to destroy, or, with intent to steal or destroy, takes and carries away any record, paper, or proceeding of a court of justice, filed or deposited with any clerk or officer of such court, or any paper, or document, or record filed or deposited in any public office, or with any judicial or public officer, shall, without reference to the value of the record, paper, document, or proceeding so taken, pay a fine of not more than two thousand dollars, or suffer imprisonment, at hard labor, not more than three years, or both.

---

[1] For statutory requirements in respect to the free transmission of official mail matter, see the chapter entitled THE POST-OFFICE DEPARTMENT.

Destroying records by officer in charge.
Feb. 26, 1853, c. 81, s. 5, v. 10, p. 170.
Sec. 5408, R.S.

104. Every officer, having the custody of any record, document, paper, or proceeding specified in section fifty-four hundred and three, who fraudulently takes away, or withdraws, or destroys any such record, document, paper, or proceeding filed in his office or deposited with him or in his custody, shall pay a fine of not more than two thousand dollars, or suffer imprisonment at hard labor not more than three years, or both; and shall, moreover, forfeit his office and be forever afterward disqualified from holding any office under the Government of the United States.

Forging, etc. bid, public record, etc.
Apr. 5, 1866, c. 24, s. 1, v. 14, p. 12.
U. S. *v.* Lawrence, 13 Blatch., 211.
Sec. 5418, R.S.

105. Every person who falsely makes, alters, forges, or counterfeits any bid, proposal, guarantee, official bond, public record, affidavit, or other writing, for the purpose of defrauding the United States, or utters or publishes as true any such false, forged, altered, or counterfeited bid, proposal, guarantee, official bond, public record, affidavit, or other writing, for such purpose, knowing the same to be false, forged, altered, or counterfeited, or transmits to or presents at the office of any officer of the United States any such false, forged, altered, or counterfeited bid, proposal, guarantee, official bond, public record, affidavit, or other writing, knowing the same to be false, forged, altered, or counterfeited, for such purpose, shall be imprisoned at hard labor for a period not more than ten years, or be fined not more than one thousand dollars, or be punished by both such fine and imprisonment.

DISPOSITION OF USELESS PAPERS.

Disposition of useless papers.
February 16, 1889, v. 25, p. 672.

106. Whenever there shall be in any one of the Executive Departments of the Government an accumulation of files of papers, which are not needed or useful in the transaction of the current business of such Department and have no permanent value or historical interest, it shall be the duty of the head of such Department to submit to Congress a report of that fact, accompanied by a concise statement of the condition and character of such papers. And upon the submission of such report, it shall be the duty of the presiding officer of the Senate to appoint two Senators, and of the Speaker of the House of Representatives to appoint two Representatives, and the Senators and Representatives so appointed shall constitute a joint committee, to which shall be referred such report, with the accompanying statement of the condition and character

Report to Congress. Examination by committee.

of such papers, and such joint committee shall meet and examine such report and statement and the papers therein described, and submit to the Senate and House, respectively, a report of such examination and their recommendation. And if they report that such files of papers or any part thereof are not needed or useful in the transaction of the current business of such Department, and have no permanent value or historical interest, then it shall be the duty of such head of the Department to sell as waste paper, or otherwise dispose of such files of papers upon the best obtainable terms after due publication of notice inviting proposals therefor, and receive and pay the proceeds thereof into the Treasury of the United States, and make report thereof to Congress. *Act of February 16, 1889 (25 Stat. L., 672).*

Report.

Sale, etc.

The same.
March 2, 1895, v. 28, *p.* 910.

107. The act entitled "An act to authorize and provide for the disposition of useless papers in the Executive Departments," approved February sixteenth, eighteen hundred and eighty-nine, is hereby amended so as to include in its provisions any accumulation of files of papers of a like character therein described now or hereafter in the various public buildings under the control of the several Executive Departments of the Government. *Act of March 2, 1895 (28 Stat. L., 910).*

Books, papers, etc., to be accessible to accounting officers.
Feb. 19, 1807, v. 29, p. 550.

108. All books, papers, and other matters relating to the office or accounts of disbursing officers of the Executive Departments, and commissions, boards, and establishments of the Government in the District of Columbia shall at all times be subject to inspection and examination by the Comptroller of the Treasury and the Auditor of the Treasury authorized to settle such accounts, or by the duly authorized agents of either of said officials. *Act of February 19, 1897 (29 Stat. L., 550).*

DOCUMENTS FOR DEPARTMENTAL LIBRARIES.

Deposit of documents.
Jan. 12, 1895, s. 98, v. 28, p. 594.

109. The libraries of the eight Executive Departments, of the United States Military Academy, and United States Naval Academy are hereby constituted designated depositories of Government publications, and the superintendent of documents shall supply one copy of said publications in the same form as supplied to other depositories to each of said libraries. *Sec. 98, act of January 12, 1895 (28 Stat. L., 594).*

PROSECUTION OF CLAIMS.

110. Subpœnas to witnesses.
111, 112. Witnesses' fees; testimony.
113. Professional assistance, how obtained.
114. Evidence to be furnished by Departments.
115. Employment of attorneys and counsel.
116. Persons formerly in Departments not to prosecute claims.

Subpœnas to witnesses.
Feb. 14, 1871, c. 51, s. 1, v. 16, p. 412.
Sec. 184, R. S.

110. Any head of a Department or Bureau in which a claim against the United States is properly pending may apply to any judge or clerk of any court of the United States, in any State, District, or Territory, to issue a subpœna for a witness being within the jurisdiction of such court, to appear at a time and place in the subpœna stated, before any officer authorized to take depositions to be used in the courts of the United States, there to give full and true answers to such written interrogatories and cross-interrogatories as may be submitted with the application, or to be orally examined and cross-examined upon the subject of such claim.

Witnesses' fees.
Feb. 14, 1871, c. 51, s. 1, v. 16, p. 412.
Sec. 185, R. S.

111. Witnesses subpœnaed pursuant to the preceding section shall be allowed the same compensation as is allowed witnesses in the courts of the United States.

Compelling testimony.
Feb. 14, 1871, c. 51, s. 1, v. 16, p. 412.
Sec. 186, R. S.

112. If any witness, after being duly served with such subpœna, neglects or refuses to appear, or, appearing, refuses to testify, the judge of the district in which the subpœna issued may proceed, upon proper process, to enforce obedience to the subpœna, or to punish the disobedience, in like manner as any court of the United States may do in case of process of subpœna ad testificandum issued by such court.

Professional assistance; how obtained.
Feb. 14, 1871, c. 51, s. 3, v. 16, p. 412.
Sec. 187, R. S.

113. Whenever any head of a Department or Bureau having made application pursuant to section one hundred and eighty-four, for a subpœna to procure the attendance of a witness to be examined, is of opinion that the interests of the United States require the attendance of counsel at the examination, or require legal investigation of any claim pending in his Department or Bureau, he shall give notice thereof to the Attorney-General, and of all facts necessary to enable the Attorney-General to furnish proper professional service in attending such examination, or making such investigation, and it shall be the duty of the Attorney-General to provide for such service.

Evidence to be furnished by the Departments in suits pending in the Court of Claims.

114. In all suits brought against the United States in the Court of Claims founded upon any contract, agreement, or transaction with any Department, or any Bureau, officer, June 25, 1868, c. 71, s. 6, v. 15, p. 76. Sec. 188, R. S.

or agent of a Department, or where the matter or thing on which the claim is based has been passed upon and decided by any Department, Bureau, or officer authorized to adjust it, the Attorney-General shall transmit to such Department, Bureau, or officer, a printed copy of the petition filed by the claimant, with a request that the Department, Bureau, or officer, shall furnish to the Attorney-General all facts, circumstances, and evidence touching the claim in the possession or knowledge of the Department, Bureau, or officer. Such Department, Bureau, or officer shall, without delay, and within a reasonable time, furnish the Attorney-General with a full statement, in writing, of all such facts, information, and proofs. The statement shall contain a reference to or description of all such official documents or papers, if any, as may furnish proof of facts referred to in it, or may be necessary and proper for the defense of the United States against the claim, mentioning the Department, office, or place where the same is kept or may be procured. If the claim has been passed upon and decided by the Department, Bureau, or officer, the statement shall succinctly state the reasons and principles upon which such decision was based. In all cases where such decision was founded upon any act of Congress, or upon any section or clause of such act, the same shall be cited specifically; and if any previous interpretation or construction has been given to such act, section, or clause by the Department, Bureau, or officer, the same shall be set forth succinctly in the statement, and a copy of the opinion filed, if any, shall be annexed to it. Where any decision in the case has been based upon any regulation of a Department, or where such regulation has, in the opinion of the Department, Bureau, or officer transmitting such statement, any bearing upon the claim in suit, the same shall be distinctly quoted at length in the statement. But where more than one case, or a class of cases, is pending, the defense to which rests upon the same facts, circumstances, and proofs, the Department, Bureau, or officer shall only be required to certify and transmit one statement of the same, and such statement shall be held to apply to all such cases, as if made out, certified, and transmitted in each case respectively.[1]

Employment of attorneys or counsel.

115. No head of a Department shall employ attorneys or counsel at the expense of the United States; but when in

---

[1] See the title *The Court of Claims* in the chapter entitled THE DEPARTMENT OF JUSTICE; see, also, the chapter entitled THE DEPARTMENT OF THE TREASURY DEPARTMENT.

June 22, 1870, c. 150, s. 17, v. 16, p. 164.
Sec. 189, R. S.

need of counsel or advice, shall call upon the Department of Justice, the officers of which shall attend to the same.[1]

Persons formerly in the Departments not to prosecute claims in them.
June 1, 1872, c. 256, s. 5, v. 17, p. 202.
Sec. 190, R. S.

116. It shall not be lawful for any person appointed after the first day of June, one thousand eight hundred and seventy-two, as an officer, clerk, or employee in any of the Departments, to act as counsel, attorney, or agent for prosecuting any claim against the United States which was pending in either of said Departments while he was such officer, clerk, or employee, nor in any manner, nor by any means, to aid in the prosecution of any such claim, within two years next after he shall have ceased to be such officer, clerk or employee.[2]

---

[1] See paragraph 343, post, and paragraph 113, ante.

[2] See XVIII Opin. Att. Gen., 125, 136; XIX ibid., 328; XX ibid., 657.

CHAPTER III.

THE DEPARTMENT OF WAR.

Par.
117, 118. The War Department.
119–121. Performance of duties in the absence or illness of the Secretary of War or head of a bureau. The same, during absence of a chief of bureau.
122–128. Duties of the Secretary of War.
Par.
129–133. Reports.
134–136. Clerical force of the Department.
137. Claims.
138–139. The War Department building.
140, 141. Sale of maps, charts, etc.

THE WAR DEPARTMENT.

Par.
117. The Secretary of War.
Par.
118. The Assistant Secretary of War.

117. There shall be at the seat of Government an Executive Department to be known as the Department of War, and a Secretary of War, who shall be the head thereof.[1]

Establishment of the Department of War.
Sec. 214, R. S.

118. There shall be in the Department of War an Assistant Secretary of War, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be entitled to a salary of four thousand five hundred dollars a year, payable monthly, and who shall perform such duties in the Department of War as shall be prescribed by the Secretary or may be required by law.[2] *Act March 5, 1890 (26 Stat. L., 17).*

Assistant Secretary of War to be appointed.
Mar. 5, 1890, v. 20, p. 17.

Salary.

Duties.

---

[1] The Department of War and the office of Secretary of War were created by the act of August 7, 1789 (1 Stat. L., 49). The Secretary of War succeeded to the office and functions of the Secretary at War, whose powers and duties were defined in an ordinance of Congress dated January 27, 1785 (1 Stat. L., 49, note *b*). The office of Secretary of War included that of Secretary of the Navy until April 30, 1798, when the Department of the Navy was established, and so much of the act of August 7, 1789, as imposed duties upon the Secretary of War in connection therewith was repealed (1 Stat. L., 553). For statutory provisions respecting a temporary vacancy in the office of Secretary of War see paragraphs 7 to 14, ante.

[2] The act of August 5, 1882, authorizing the appointment of an Assistant Secretary of War was repealed by the act of July 7, 1884 (23 Stat. L., 331), the power conferred by the act of August 5, 1882, never having been exercised. In the case of Ryan *v.* U. S., 136 U. S., 18, 80, it was held that the authority vested in the Secretary of War could in his absence be exercised by the officer who under the law became for the time acting Secretary of War.

PERFORMANCE OF DUTIES IN ABSENCE OR ILLNESS OF SECRETARY OF WAR.

Par.
119. General Commanding the Army, etc., may be designated.
120. Chief clerk may sign requisitions, etc., during illness or absence of Secretary.
121. Absence of head of bureau.

Commanding General of the Army, etc., may be designated by President to perform duties of Secretary of War.
Aug. 5, 1882, v. 22, p. 238.

119. The President may authorize and direct the Commanding General of the Army or the chief of any military bureau of the War Department to perform the duties of the Secretary of War under the provisions of section one hundred and seventy-nine of the Revised Statutes, and section twelve hundred and twenty-two of the Revised Statutes shall not be held or taken to apply to the officer so designated by reason of his temporarily performing such duties. *Act of August 5, 1882 (22 Stat. L., 238).*

Secretary of War may authorize chief clerk to sign requisitions, etc., in his absence.
Mar. 4, 1874, v. 18, p. 19.

120. When, from illness or other cause, the Secretary of War is temporarily absent from the War Department, he may authorize the chief clerk of the Department to sign requisitions upon the Treasury Department, and other papers requiring the signature of said Secretary; the same, when signed by the chief clerk during such temporary absence, to be of the same force and effect as if signed by the Secretary of War himself.[1] *Act of March 4, 1874 (18 Stat. L., 19).*

Designation of officer to act as chief of bureau.
Feb. 25, 1877, v. 19, p. 242.
Sec. 1132, R. S.

121. During the absence of the Quartermaster-General, or the chief of any military bureau of the War Department, the President is authorized to empower some officer of the department or corps whose chief is absent to take charge thereof, and to perform the duties of Quartermaster-General, or chief of department or corps, as the case may be, during such absence.[2] *Act of February 25, 1877 (19 Stat. L., 242).*

---

[1] For the general duties of chief clerks see paragraphs 21 and 22, *ante.*

[2] This section contains the substance of section 5 of the act of July 4, 1836 (5 Stat. L., 117), which was passed in order to enable Q. M. Gen. Thos. S. Jesup to exercise command of the troops engaged in the prosecution of the Florida war. General Jesup served under this assignment from May 19, 1836, to July 7, 1838, when he resumed the performance of his duties as Quartermaster-General in the War Department.

DUTIES OF THE SECRETARY OF WAR.

Par.
122. Management of military affairs.
123. Custody of records.
124. Collection of flags, etc.
125. Designation and purchase of supplies.
126. Transportation of troops.
127. Construction and operation of telegraph lines.
128. Administration of oaths in investigations.

122. The Secretary of War shall perform such duties as shall from time to time be enjoined on or intrusted to him by the President relative to military commissions, the military forces, the warlike stores of the United States, or to other matters respecting military affairs; and he shall conduct the business of the Department in such manner as the President shall direct.[3] (*See secs. 3660–3665, 3669, R. S.*)

Management of military affairs.
Aug. 7, 1789, c. 7, s. 1, v. 1, p. 49.
Sec. 216, R. S.

123. The Secretary of War shall have the custody and charge of all the books, records, papers, furniture, fixtures, and other property appertaining to the Department.

Custody of the departmental records and property.
Aug. 7, 1789, c. 7, ss. 2, 4, v. 1, p. 50.
Sec. 217, R. S.

---

[3] The Secretary of War is the regular constitutional organ of the President for the administration of the military establishment of the nation; and rules and orders publicly promulgated through him must be received as the acts of the Executive and, as such, be binding upon all within the sphere of his legal and constitutional authority. Such regulations can not be questioned or defied because they may be thought unwise or mistaken. The right of so considering and treating the authority of the Executive, vested as it is with the command of the military and naval forces, could not be intrusted to officers of any grade inferior to the Commander in Chief; its consequence, if tolerated, would be a complete disorganization of both the Army and Navy. U. S. *v.* Eliason, 16 Pet., 291, 302; Wilcox *v.* Jackson, 13 Pet., 498, 513; Wolsey *v.* Chapman, 101 U. S., 755; Runkle *v.* U. S., 122 U. S., 543, 557; U. S. *v.* Adams, 7 Wall., 463. The Secretary of War is not required to perform duties in the field. He does not compose any part of the Army, and has no service to perform that may not be done at the seat of government. 1 Opin. Att. Gen., 457; U. S. *v.* Burns, 12 Wall., 246; see also note 2 to par. 5, and the title *Bridges over the navigable waters of the United States*, in the chapter entitled THE CORPS OF ENGINEERS.

Duties imposed by statute.—In addition to his duties as the constitutional organ of the President for the administration of the military establishment, the Secretary of War is, by other statutes, charged with the supervision of the administration of the several bureaus or offices of the War Department, their estimates, contracts, expenditures, reports, and returns being under his sole direction and control. He has also been charged, from time to time, with the execution of laws relating to national cemeteries, the Soldiers' Home, the National Home for Disabled Volunteer Soldiers, the military prison, the detail of officers to colleges, the distribution of relief to sufferers by fire, flood, or by the failure of crops, due to drought or other causes, the construction and operation of canals, roads, and lines of telegraph, the location and construction of bridges over the navigable waters of the United States, of railroads through the public lands, the protection of settlers and emigrants, the establishment of harbor lines, the adjustment of claims, the establishment and maintenance of national military parks, and the location, marking, and preservation of lines of battle on the battlefields of the civil war. Since the act of June 28, 1864, all statutes authorizing the construction of works of river and harbor improvement have contained the provision that the sums appropriated shall be expended under his direction. The Military Academy and the schools of application at Willets Point, Fortress Monroe, and at Forts Leavenworth and Riley are also carried on under the immediate supervision of the Secretary of War. By the act of April 10, 1878, the Secretary of War is authorized to prescribe rules and regulations to be observed in the preparation, submission, and opening of bids for contracts under the War Department. See also pars. 5 and 6 and notes thereunder for general provisions respecting the powers and duties of the heads of the several Executive Departments.

Collecting flags, etc.
Apr. 18, 1814, c. 78, s. 1, v. 3, p. 133.
Sec. 218, R. S.

124. The Secretary of War shall from time to time cause to be collected and transmitted to him, at the seat of government, all such flags, standards, and colors as are taken by the Army from the enemies of the United States.

Purchase and transportation of supplies.
Mar. 3, 1813, c. 48, s. 5, v. 2, p. 817.
Sec. 219, R. S.

125. The Secretary of War shall from time to time define and prescribe the kinds as well as the amount of supplies to be purchased by the Subsistence and Quartermaster departments of the Army, and the duties and powers thereof respecting such purchases; and shall prescribe general regulations for the transportation of the articles of supply from the places of purchase to the several armies, garrisons, posts, and recruiting places, for the safe-keeping of such articles, and for the distribution of an adequate and timely supply of the same to the regimental quartermasters, and to such other officers as may by virtue of such regulations be intrusted with the same; and shall fix and make reasonable allowances for the store rent and storage necessary for the safe-keeping of all military stores and supplies.

Transportation of troops, etc.
Jan. 31, 1862, c. 15, s. 4, v. 12, p. 334.
Sec. 220, R. S.

126. The transportation of troops, munitions of war, equipments, military property, and stores, throughout the United States, shall be under the immediate control and supervision of the Secretary of War and such agents as he may appoint.

Construction of new lines of telegraph, etc.
June 20, 1878, v. 20, p. 219.

127. That the construction of new lines of telegraph shall be under the supervision and direction of the several military commanders, subject to the approval of the Secretary of War.[1] *Act of June 20, 1878 (20 Stat. L., 219).*

Power to administer oaths.
Mar. 3, 1865, c. 79, s. 25. v. 13, p. 491.
Sec. 225, R. S.

128. The Secretary of War is authorized to detail one or more of the employees of the War Department for the purpose of administering the oaths required by law in the settlement of officers' accounts for clothing, camp and garrison equipage, quartermaster's stores, and ordnance, which oaths shall be administered without expense to the parties taking them.

---

[1] The act ot October 1, 1890, provides that "the civilian duties now performed by the Signal Corps of the Army shall hereafter devolve upon a bureau, which, on or after July first, eighteen hundred and ninety-one, shall be established in the Department of Agriculture, and the Signal Corps of the Army shall remain a part of the military establishment, under the direction of the Secretary of War, and all estimates for its support shall be included with other estimates for the support of the military establishment." Vol. 26, Stat. L., ch. 1266, p. 653. This statute operates to repeal so much of sections 221, 222, and 223 of the Revised Statutes as imposed duties upon the Secretary of War and the Chief Signal Officer in connection with the observation and report of storms, leaving under their direction such duties in connection with the construction and repair of military telegraph lines as were imposed by the acts of March 3, 1875, 18 Stat. L., p. 388, and June 20, 1878, 20 Stat. L., p. 219. See chapter entitled THE SIGNAL DEPARTMENT, post.

REPORTS.[1]

Par.
129. Unexpended balances.
130. Expenditures for contingencies of the Army.
Par.
131. Proposals for public works.
132. Examination of rivers and harbors.
133. Returns of the militia.

129. The Secretary of War shall make an annual report to Congress containing a statement of the appropriations of the preceding fiscal year for the Department of War, showing the amount appropriated under each specific head of appropriation, the amount expended under each head, and the balance which, on the thirtieth day of June preceding such report, remained unexpended. Such reports shall be accompanied by estimates of the probable demands which may remain on each appropriation.

Report of unexpended balances.
May 1, 1820, c. 52, s. 2, v. 3, p. 567; Apr. 20, 1874, c. 117, s. 2, v. 18, p. 33.
Sec. 228, R. S.

130. The Secretary of War shall lay before Congress, at the commencement of each regular session, a statement of * * * the expenditure of the moneys appropriated for the contingent expenses of the military establishment. *Act of March 2, 1895 (28 Stat. L., 787).*

Annual statement of expenditure of appropriation for contingent expenses.
Mar. 3, 1809, c. 28, s. 5, v. 2, p. 536.
Sec. 229, R. S.

131. Whenever the Secretary of War invites proposals for any works, or for any materials or labor for any work, he shall report to Congress, at its next session, all bids therefor, with the names of the bidders.

Proposals for public works.
June 23, 1866, s. 14, v. 14, p. 73.
Sec. 230, R. S.

132. The Secretary of War shall cause to be prepared and submitted to Congress, in connection with the reports of examinations and surveys of rivers and harbors hereafter made by order of Congress, full statements of all existing facts tending to show to what extent the general commerce of the country will be promoted by the several works of improvements contemplated by such examinations and surveys, to the end that public moneys shall not be applied excepting where such improvements shall tend to subserve the general commercial and navigation interests of the United States.

Report of examinations of river and harbor improvements.
July 27, 1868, Res. No. 76, v. 15, p. 262.
Sec. 231, R. S.

133. The Secretary of War shall lay before Congress, on or before the first Monday in February of each year, an abstract of the returns of the adjutants-general of the several States of the militia thereof.[2]

Returns of the militia.
Sec. 232, R. S.

---

[1] For other reports, required by statute to be rendered by heads of Executive Departments, see paragraphs 59, 60, 73 to 78, *ante;* for reports required to be rendered by the Secretary of War, see the chapters relating to the several staff departments.

[2] See chapter entitled THE MILITIA. For statute requiring a report of the names, compensation, etc., of civil engineers employed on works of river and harbor improvement, to be rendered to Congress annually by the Secretary of War, see the chapter entitled THE ENGINEER DEPARTMENT.

CLERICAL FORCE OF THE WAR DEPARTMENT.

Par.
134. Chief clerk; duties.
135. Clerical force of the Department.
136. Restriction details.

Chief clerk, Feb. 27, 1877, v. 19, p. 241.

134. There shall be in the said Department an inferior officer, to be appointed by said principal officer, to be employed therein as he shall deem proper, and to be called the chief clerk in the Department of War, and who, whenever the said principal officer shall be removed from office by the President of the United States, or in any other case of vacancy, shall, during such vacancy, have the charge and custody of all records, books, and papers appertaining to the said Department.[1] *Act of February 27, 1877 (19 Stat. L., 241).*

Subordinate officers. Mar. 3, 1853, v. 10, p. 211. Sec. 215, R. S.

135. There shall be in the Department of War:[2]

One chief clerk of the Department, at a salary of two thousand five hundred dollars a year. One disbursing clerk.[3]

---

[1] For the powers and duties of chief clerks, see paragraphs 21 to 23, *ante;* for requirement authorizing the chief clerk of the War Department to sign requisitions and other papers in the temporary absence of the Secretary, see paragraph 120, *ante.*

[2] The strength and composition of the clerical force in the War Department and its several bureaus and offices is now fixed and established in the annual acts of appropriation.

The following clerical force in the Secretary's office is authorized by the act of March 3, 1901 (31 Stat., 988): One "chief clerk, including five hundred dollars as assistant in military park and insular affairs, three thousand dollars; clerk to the chief clerk, two thousand one hundred dollars; clerk to the Secretary, two thousand two hundred and fifty dollars; clerk to the Assistant Secretary, two thousand one hundred dollars; stenographer, one thousand eight hundred dollars; disbursing clerk, two thousand dollars; four chiefs of division, at two thousand dollars each; superintendent of buildings, outside of State, War, and Navy Department building, in addition to compensation as chief of division, five hundred dollars; appointment clerk, two thousand dollars; librarian, one thousand eight hundred dollars; four clerks of class four; five clerks of class three; ten clerks of class two; eleven clerks of class one; four clerks, at one thousand dollars each; carpenter, one thousand dollars; foreman of laborers, one thousand dollars; two carpenters, at nine hundred dollars each; four messengers; seven assistant messengers; eight laborers; hostler, six hundred dollars; two hostlers, and one watchman, at five hundred and forty dollars each; in all, one hundred and four thousand one hundred and fifty dollars."

Temporary clerical force.—The act of March 3, 1901 (31 Stat. L., 988), makes the following provision: "For continuing the employment of such additional temporary force of clerks, messengers, laborers, and other assistants, rendered necessary because of increased work incident to the war with Spain, as in the judgment of the Secretary of War may be proper and necessary to the prompt, efficient, and accurate dispatch of official business in the War Department and its bureaus, to be allotted by the Secretary of War to such bureaus and offices as the exigencies of the needs of the service may demand; six hundred thousand dollars." The same enactment also contains the following restriction upon the employment of the temporary services therein authorized: "Persons in the classified service of the Government shall not be eligible to appointment under this appropriation or other appropriations for additional employees because of increased work incident to the war with Spain or to be transferred from any position in the classified service to positions paid under this or said other appropriations."

[3] The following offices, created by section 215, Revised Statutes, have ceased to exist: One superintendent of the War Department building, at $250 per year (see

In the office of the Adjutant-General: One chief clerk, at a salary of two thousand dollars a year.[1]

In the office of the Quartermaster-General: One chief clerk, at a salary of two thousand dollars a year.[2]

In the office of the Paymaster-General: One chief clerk, at a salary of two thousand dollars a year.[3]

In the office of the Commissary-General: One chief clerk, at a salary of two thousand dollars a year.[4]

In the office of the Surgeon-General: One chief clerk, at a salary of two thousand dollars a year.[5]

---

section 6 of the act of August 5, 1882, 22 Stat. L., 256, paragraph 82, post); one superintendent of building in the Quartermaster-General's Office, (*a*) at $200 per year; one superintendent of building in the Paymaster-General's Office, (*a*) at $250 per year; one superintendent of building in the office of the Commissary-General of Subsistence, (*a*) at $250 year.

[1] Adjutant-General's Office: The authorized clerical force in the office of the Adjutant-General is as follows: One "chief clerk, two thousand dollars; clerk to the Adjutant-General, one thousand eight hundred dollars; two chiefs of division, at two thousand dollars each; twelve clerks of class four; fourteen clerks of class three; thirteen clerks of class two; fifty-eight clerks of class one; seven clerks, at one thousand dollars each; four messengers; eighteen assistant messengers; and three watchmen; in all, one hundred and sixty-five thousand and eighty dollars." Act of March 3, 1901 (31 Stat. L., 989).

[2] Quartermaster-General's Office: The following is the authorized clerical force in the office of the Quartermaster-General: One "chief clerk, two thousand dollars; eleven clerks of class four; nine clerks of class three; twenty-three clerks of class two; thirty-nine clerks of class one; eight clerks, at one thousand dollars each; six skilled typewriters, at one thousand dollars each; female messenger, four hundred and eighty dollars; four messengers; nine assistant messengers; two laborers; civil engineer, one thousand eight hundred dollars; assistant civil engineer, one thousand two hundred dollars; draftsman, one thousand eight hundred dollars; assistant draftsman, one thousand six hundred dollars; assistant draftsman, one thousand four hundred dollars; assistant draftsman, one thousand four hundred dollars; experienced builder and mechanic, two thousand five hundred dollars; in all, one hundred and fifty-two thousand five hundred and forty dollars." Ibid.

[3] Paymaster-General's Office: The following is the authorized clerical force in the office of the Paymaster-General: One "chief clerk, two thousand dollars; five clerks of class four; five clerks of class three; seven clerks of class two; two clerks of class one; one assistant messenger; four laborers; in all, thirty-four thousand five hundred and sixty dollars." Ibid.

[4] Commissary-General's Office: The following is the authorized clerical force in the office of the Commissary-General of Subsistence: One "chief clerk, two thousand dollars; two clerks of class four; four clerks of class three; five clerks of class two; eleven clerks of class one; nine clerks, at one thousand dollars each; two assistant messengers; two laborers; in all, forty-three thousand nine hundred and sixty dollars." Ibid.

[5] Surgeon-General's Office: The following is the authorized clerical force in the office of the Surgeon-General: One "chief clerk, two thousand dollars; fourteen clerks of class four; eleven clerks of class three; twenty-six clerks of class two; twenty-nine clerks of class one; five clerks, at one thousand dollars each; anatomist, one thousand six hundred dollars; engineer, one thousand four hundred dollars; assistant engineer, for night duty, nine hundred dollars; two firemen; skilled mechanic, one thousand dollars; twelve assistant messengers; three watchmen; superintendent of building

---

[a] Section 3 of the act of April 17, 1900 (31 Stat. L., 1009), and section 3 of the act of March 3, 1901 (Ibid.), contained the requirement that "the term of temporary service of such additional clerks and other employees rendered necessary because of increased work incident to the war with Spain, and under the act of June thirteenth, eighteen hundred and ninety-eight, providing for war expenditures and for other purposes, appointed in the various departments of the Government, shall be extended for the term of one year from June thirtieth, nineteen hundred, without compliance with the conditions prescribed by the act entitled 'An act to regulate and improve the civil service,' approved January sixteenth, eighteen hundred and eighty-three, provided they are otherwise competent."

In the office of the Chief of Engineers: One chief clerk, at a salary of two thousand dollars a year.[1]

In the office of the Chief of Ordnance: One chief clerk, at a salary of two thousand dollars a year.[2]

In the office of the Judge-Advocate-General: One chief clerk, at a salary of two thousand dollars a year.[3]

Restriction on details.
June 20, 1874, v. 18, p. 85.

136. Hereafter it shall be unlawful to allow or pay to any of the persons designated in this act any additional compensation from any source whatever, or to retain, detail, or employ in any branch of the War Department in the city of Washington any persons other than those herein

---

(Army Medical Museum and Library), two hundred and fifty dollars; five laborers; chemist, two thousand and eighty-eight dollars; principal assistant librarian, two thousand and eighty-eight dollars; pathologist, one thousand eight hundred dollars; microscopist, one thousand eight hundred dollars; assistant librarian, one thousand eight hundred dollars; in all, one hundred and fifty-one thousand two hundred and sixty-six dollars." Ibid.

[1] ENGINEER OFFICE: The following is the authorized clerical force in the office of the Chief of Engineers: One "chief clerk, two thousand dollars; five clerks of class four; four clerks of class three; four clerks of class two; four clerks of class one; one clerk, one thousand dollars; one assistant messenger, and two laborers; in all, thirty thousand eight hundred and forty dollars.

"And the services of skilled draftsmen, civil engineers, and such other services as the Secretary of War may deem necessary may be employed in the office of the Chief of Engineers to carry into effect the various appropriations for rivers and harbors, fortifications, and surveys to be paid from such appropriations: *Provided*, That the expenditures on this account for the fiscal year ending June thirtieth, nineteen hundred and one, shall not exceed seventy-two thousand dollars; and that the Secretary of War shall each year, in the annual estimates, report to Congress the number of persons so employed and the amount paid to each." Act of March 3, 1901 (31 Stat. L., 990).

[2] ORDNANCE OFFICE: The following is the authorized clerical force in the office of the Chief of Ordnance: One "chief clerk, two thousand dollars; two clerks of class four; two clerks of class three; two clerks of class two; twenty clerks of class one; three clerks, at one thousand dollars each; two messengers; one assistant messenger; one laborer; in all, forty-one thousand six hundred and sixty dollars." Ibid.

[3] JUDGE-ADVOCATE-GENERAL'S OFFICE: The following is the authorized clerical force in the Judge-Advocate-General's Office: One "chief clerk, two thousand dollars; one clerk of class four; two clerks of class three; one clerk of class two; three clerks of class one; one clerk, one thousand dollars; one copyist; one messenger, and one assistant messenger; in all, fifteen thousand four hundred and sixty dollars." Ibid.

SIGNAL OFFICE: "For chief clerk, two thousand dollars; one clerk of class four; one clerk of class one; one messenger; one laborer; in all, six thousand five hundred dollars." Ibid.

OFFICE OF THE INSPECTOR-GENERAL: "For one clerk of class four; two clerks of class three; three clerks of class two; two clerks of class one; one messenger, and one assistant messenger; in all, thirteen thousand one hundred and sixty dollars." Ibid.

RECORD AND PENSION OFFICE: "For three chiefs of division, at two thousand dollars each; one agent, two thousand dollars; twenty-four clerks of class four; forty-five clerks of class three; ninety-five clerks of class two; one hundred and eighty-seven clerks of class one; fifty-five clerks, at one thousand dollars each; engineer, one thousand four hundred dollars; assistant engineer, nine hundred dollars; two firemen; skilled mechanic, one thousand dollars; five messengers; thirty-five assistant messengers; messenger boy, three hundred and sixty dollars; five watchmen; superintendent of building, two hundred and fifty dollars; and seventeen laborers; in all, five hundred and eighty-five thousand one hundred and seventy dollars; and all employees provided for by this paragraph for the Record and Pension Office of the War Department shall be exclusively engaged on the work of this office for the fiscal year nineteen hundred and one." Ibid.

authorized,[1] except in the Signal Offices and the Engineer Corps, and except such commissioned officers as the Secretary of War may, from time to time, assign to special duties. *Act of June 20, 1874 (18 Stat. L., 85).*

CLAIMS FOR LOSS AND INJURY TO PROPERTY DURING WAR WITH SPAIN.

Investigation of claims: Limitation.
June 6, 1900. v. 31, p. 632.

137. For investigation of just claims against the United States for private property taken and used in the military service within the limits of the United States during the war with Spain, ten thousand dollars, or so much thereof as may be necessary; and the Secretary of War is hereby authorized and directed to cause to be investigated all such claims and to ascertain the loss and injury, if any, that may have been sustained by such claimants, and he shall report to Congress for its consideration what amount or amounts he finds to be equitably due from the United States to such claimants: *Provided*, That all claims not presented to the Secretary of War under this provision prior to the first day of January, nineteen hundred and one, shall not be considered by him and shall be forever barred.[2] *Act of June 6, 1900 (31 Stat. L., 632).*

THE WAR DEPARTMENT BUILDING.

Assignment of rooms, etc., of State, War, and Navy building.
Sec. 6, Aug. 5, 1882, v. 22, p. 256.

138. The fourth story and attic of the South wing of the State, War, and Navy building, except such portion as is now within the Library of the State Department, are assigned to the War Department for such uses of the Department as in the judgment of the Secretary of War they may be best fitted, and the sum of one thousand dollars, or so much thereof as may be necessary, is hereby appropriated, out of any money not otherwise appropriated, to be expended under the direction of the Secretary of State to enable the Department to remove from said fourth story and attic the records, documents, and papers now stored there, and to rearrange them in other rooms in said Department. That the partition wall separating the corridors of the first, second, third, and fourth stories of the East wing from the said stories of the South wing of the State,

---

[1] The clause of the above enactment authorizing details in the city of Washington may be regarded as superseded by section 4 of the act of August 5, 1882 (22 Stat. L., 219); the clerks and messengers at the headquarters of the Army, authorized to be employed by the act of March 15, 1898 (30 Stat. L., 318), and subsequent acts of appropriation, are not included in the above restriction, their employment in the city of Washington being expressly authorized by Congress.

[2] See the title *Prosecution of Claims* in the chapter entitled PROVISIONS APPLICABLE TO THE SEVERAL EXECUTIVE DEPARTMENTS.

War, and Navy building shall be removed so as to afford easy access from one wing to the other on the aforementioned floors of said building: *Provided*, That a joint select committee of three members of the House of Representatives and three Senators, to be appointed respectively by the Speaker of the House and the President of the Senate, upon the passage of this act, shall, on or before the completion of the North wing of the State, War, and Navy building, make examination of said building and set apart such portions thereof for the use and occupancy of the State, War, and Navy Departments respectively as in their judgment the best interests of the public service and the needs of said Departments respectively may require and upon filing an agreed statement of such partition by said joint select committee in triplicate with the respective Secretaries of such Departments the building shall be occupied as therein provided as soon thereafter as practicable.[1] *Sec. 6, act of August 5, 1882 (22 Stat. L., 256).*

Detail of officer of Engineer Corps as superintendent authorized.
Commission to have supervision, etc.
Mar. 3, 1883, v. 22, p. 553.

139. The President is hereby authorized and directed to designate from the Engineer Corps of the Army or the Navy, an officer well qualified for the purpose, who shall be detailed to act as superintendent of the completed portions of the State, War, and Navy Department building, under direction of the Secretaries of State, War, and Navy, who are hereby constituted a commission for the purposes of the care and supervision of said building, as hereinafter specified. Said officer shall have charge of said building, and all the engines, machinery, steam and water supply, heating, lighting, and ventilating apparatus, elevators, and all other fixtures in said building, and all necessary repairs and alterations thereof, as well as the direction and control of such force of engineers, watchmen, laborers, and others engaged about the building or the apparatus under his supervision; of the cleaning of the corridors and water closets; of the approaches, side-walks, lawns, court-yards, and areas of the building, and of all rooms in the subbasement which contain the boilers and other machinery, or so much of said rooms as may be indispensable to the proper performance of his duties as herein provided. *Act of March 3, 1883 (22 Stat. L., 553).*

SALE OF MAPS, CHARTS, ETC.

Surplus charts may be sold.
Mar. 3, 1869, c. 122, s. 1, v. 15, pp. 301, 303.
Sec. 226, R. S.

140. Any surplus charts of the northwestern lakes may be sold to navigators upon such terms as the Secretary of War may prescribe.

141. The Chief Signal Officer may cause to be sold any surplus maps or publications of the Signal Office, the money received therefor to be applied toward defraying the expenses of the signal service; and an account of the same shall be rendered in each annual report of the Chief of the Signal Service.[1]

Surplus maps and publications of Signal Office may be sold.
Mar. 3, 1873, c. 227, v. 17, p. 510 (527).
Sec. 227, R. S.

---

[1] DISPOSITION OF USELESS PAPERS.

For statutes regulating the disposition of useless papers, etc., in the several Executive Departments, see the acts of February 16, 1889 (25 Stat. L., 672), and March 2, 1895 (28 Stat. L., 933).

CHAPTER IV.

PROVISIONS APPLICABLE TO SEVERAL CLASSES OF OFFICERS.

Pars.
142–145. The civil service.
146–154. The civil-service law.
155–162. Oaths of office.
163–170. Salaries; double salaries.
171–179. Criminal offenses.
180–182. Miscellaneous provisions.

THE CIVIL SERVICE.

Par.
142. President to regulate admissions.
143. Preference to persons disabled in military service.
144. Recommendation of same to employment.
145. Preference to discharged soldiers and sailors in reductions.

President to regulate admissions to the civil service.
Mar. 3, 1871, c. 114, s. 9, v. 16, p. 514.
Sec. 1753, R. S.

142. The President is authorized to prescribe such regulations for the admission of persons into the civil service of the United States as may best promote the efficiency thereof, and ascertain the fitness of each candidate in respect to age, health, character, knowledge, and ability for the branch of the service into which he seeks to enter; and for this purpose he may employ suitable persons to conduct such inquiries, and may prescribe their duties, and establish regulations for the conduct of persons who may receive appointments in the civil service.[1]

Preference of persons disabled in military or naval service.
Mar. 3, 1865, Res. No. 27, s. 1, v. 13, p. 571.
Sec. 1754, R. S.

143. Persons honorably discharged from the military or naval service by reason of disability resulting from wounds or sickness incurred in the line of duty shall be preferred for appointments to civil offices, provided they are found to possess the business capacity necessary for the proper discharge of the duties of such offices.[2]

---

[1] See the title *The Civil Service Law*, post. Neither section 1753, Revised Statutes, nor the civil service act of January 16, 1883 (22 Stat. L., 403), puts any restrictions upon the power of removal from appointive offices except for refusal to contribute to political funds or neglect to render political service; hence Presidential Rule II, relating to the civil service and providing (as amended July 27, 1897), that no removal shall be made without giving the accused notice and an opportunity to make defense, has no such authority at law as confers upon the holder of an office a vested right thereto, with the right to invoke the equitable power of the courts to restrain his removal therefrom in violation of such rule. Page et al. *v.* Moffett, 85 Fed. Rep., 38. See, also, as to the equitable jurisdiction of the Federal courts, In re Sawyer, 124 U. S., 200, and World's Columbian Exp. *v.* U. S., 18 U. S. App., 159, 6 Circ. Ct. App., 71, 56 Fed. Rep., 667; Butler *v.* White, 83 ibid., 578; Carr *v.* Gordon, 82 ibid., 373.

[2] Joint resolution of March 3, 1865 (sec. 1754, Rev. Stat.), considered in connection with the act of March 3, 1871, does not exempt honorably discharged soldiers and

144. In grateful recognition of the services, sacrifices, and sufferings of persons honorably discharged from the military and naval service of the country, by reason of wounds, disease, or the expiration of terms of enlistment, it is respectfully recommended to bankers, merchants, manufacturers, mechanics, farmers, and persons engaged in industrial pursuits, to give them the preference for appointments to remunerative situations and employments.

Recommendation for employment of such persons.
Mar. 3, 1895, Res. No. 27, s. 2, v. 13, p. 571.
Sec. 1755, R. S.

145. In making any reduction of force in any of the Executive Departments, the head of such Department shall retain those persons who may be equally qualified who have been honorably discharged from the military or naval service of the United States, and the widows and orphans of deceased soldiers and sailors. *Act of August 15, 1876* (*19 Stat. L.*, *169*).

Preference in reductions.
Aug. 15, 1876, v. 19, p. 169.

THE CIVIL-SERVICE LAW.[1]

Par.
146. Appointment of commissioners.
147. Duties; examinations.
148. Chief examiner.
149. Frauds in examination.
150. Examinations for appointment and promotion.
Par.
151. Persons using intoxicating liquor barred.
152. Members of family, restriction.
153. Recommendations by members of Congress prohibited.
154. Certificate of residence.

146. That the President is authorized to appoint, by and with the advice and consent of the Senate, three persons, not more than two of whom shall be adherents of the same

Appointment of commissioners.
Jan. 16, 1883, v. 22, p. 403.

---

sailors from liability to examination for admission to the civil service, but entitles them to a preference for appointment as against other persons of equal qualifications for the place. XVII Opin. Att. Gen., 194. See, also, 19 ibid., 318.

Section 1754, Revised Statutes, provides that "persons honorably discharged from the military or naval service * * * shall be preferred for appointment to civil offices, provided they are found to possess the business capacity necessary for the discharge of the duties of such offices," and if the duties assigned to any clerk of one class can be as well performed by a clerk of a lower class, or by a female clerk, it shall be lawful for him to diminish the number of the clerks of the higher grade and increase the number of the lower grade. Section 3, act of August 15, 1876 (19 Stat. L., 169), provides that "in making any reduction of force in any Executive Department the head of such Department shall retain those persons who may be equally qualified who have been honorably discharged from the military or naval service of the United States:" *Held*, that to entitle an ex-soldier to retention in the service under these statutes, in preference to a civilian, he must be "equally qualified," that qualification must be determined by the head of the Department, and that a court could not enter an Executive Department, examine the acts of its head, inquire into the exercise of his discretion, and investigate as to the causes of its exercise. Keim *v.* U. S., 33 Ct. Cls., 174.

[1] The civil service law, act of January 16, 1883 (22 Stat. L., 403), was intended to provide a body of civil officers selected solely for competency and fitness, protect them against accountability to any political party, and prevent their discharge, promotion, or degradation for giving or withholding political contributions; but it did not deprive the appointing power of any existing rights to remove or change in rank for other reasons. Carr *v.* Gordon, 82 Fed. Rep., 373. The act of January 16, 1883, is within the legitimate scope of the general powers conferred by Art. I, sec. 8, clause 18, of the Constitution. Butler *v.* White, 83 Fed. Rep., 578; Berry *v.* White, ibid.; Ruckman *v.* White, ibid.

party, as Civil Service Commissioners, and said three commissioners shall constitute the United States Civil Service Commission. Said commissioners shall hold no other official place under the United States.

* * * * *

Duties of commissioners.

147. That it shall be the duty of said commissioners:

Rules. Sec. 2, *ibid.*

First. To aid the President, as he may request, in preparing suitable rules for carrying this act into effect,[1] and when said rules shall have been promulgated it shall be the duty of all officers of the United States in the Departments and offices to which any such rules may relate to aid, in all proper ways, in carrying said rules, and any modifications thereof, into effect.

Second. And, among other things, said rules shall provide and declare, as nearly as the conditions of good administration will warrant, as follows:

Competitive examinations.

First, for open, competitive examinations for testing the fitness of applicants for the public service now classified or to be classified[2] hereunder. Such examinations shall be practical in their character, and so far as may be shall relate to those matters which will fairly test the relative capacity and fitness of the persons examined to discharge the duties of the service into which they seek to be appointed.

Vacancies, how filled.

Second, that all the offices, places, and employments so arranged or to be arranged in classes shall be filled by selections according to grade from among those graded highest as the results of such competitive examinations.

Apportionment.

Applications for examination.

Third, appointments to the public service aforesaid in the Departments at Washington shall be appointed among the several States and Territories and the District of Columbia upon the basis of population as ascertained at the last preceding census. Every application for an examination shall contain, among other things, a statement, under oath, setting forth his or her actual bona fide residence at the time of making the application, as well as how long he or she has been a resident of such place.

---

[1] See Appendix, p. 1096.

[2] The term "classified service" indicates the parts of the service within the provisions of the civil-service law and rules requiring appointments therein to be made upon examination and certification by the commission, unless especially excepted from competition; the term "unclassified service" indicates the parts of the service which are not within those provisions, and, therefore, in which appointments may be made without examination and certification by the commission. Sec. 2, Manual for Examinations for the Classified Civil Service.

A vacancy in the classified service may be filled either by original appointment upon examination and certification by the commission, as explained, or by transfer or promotion from certain other positions in the classified service, or by reinstatement.

Probation.

Fourth, that there shall be a period of probation before any absolute appointment or employment aforesaid.

Political contributions and service.

Fifth, that no person in the public service is for that reason under any obligations to contribute to any political fund, or to render any political service, and that he will not be removed or otherwise prejudiced for refusing to do so.

Coercion.

Sixth, that no person in said service has any right to use his official authority or influence to coerce the political action of any person or body.

Noncompetitive examinations.

Seventh, there shall be noncompetitive examinations in all proper cases before the commission, when competent persons do not compete, after notice has been given of the existence of the vacancy, under such rules as may be prescribed by the commissioners as to the manner of giving notice.

Notice of changes in service.

Eighth, that notice shall be given in writing by the appointing power to said commission of the persons selected for appointment or employment from among those who have been examined, of the place of residence of such persons, of the rejection of any such persons after probation, of transfers, resignations, and removals, and of the date thereof, and a record of the same shall be kept by said commission.

Exceptions to rules.

And any necessary exceptions from said eight fundamental provisions of the rules shall be set forth in connection with such rules, and the reasons therefor shall be stated in the annual reports of the commission.

Regulations for examinations.

Third. Said commission shall, subject to the rules that may be made by the President, make regulations for, and have control of, such examinations, and, through its members or the examiners, it shall supervise and preserve the records of the same; and said commission shall keep minutes of its own proceedings.

Minutes of proceedings.

Investigations.

Fourth. Said commission may make investigations concerning the facts, and may report upon all matters touching the enforcement and effects of said rules and regulations, and concerning the action of any examiner or board of examiners hereinafter provided for, and its own subordinates, and those in the public service, in respect to the execution of this act.

Annual report.

Fifth. Said commission shall make an annual report to the President for transmission to Congress, showing its own action, the rules and regulations and the exceptions thereto in force, the practical effects thereof, and any suggestions it may approve for the more effectual accomplishment of the purposes of this act. *Sec. 2, act of January 16, 1883 (22 Stat. L., 403).*

Chief examiner.
Sec. 3, *ibid.*

148. Said commission is authorized to employ a chief examiner, a part of whose duty it shall be, under its direction, to act with the examining boards, so far as practicable, whether at Washington or elsewhere, and to secure accuracy, uniformity, and justice in all their proceedings, which shall be at all times open to him. The chief examiner shall be entitled to receive a salary at the rate of three thousand dollars a year, and he shall be paid his necessary traveling expenses incurred in the discharge of his duty. The commission shall have a secretary, to be appointed by the President, who shall receive a salary of one thousand six hundred dollars per annum. It may, when necessary, employ a stenographer and a messenger, who shall be paid, when employed, the former at the rate of one thousand six hundred dollars a year, and the latter at the rate of six hundred dollars a year. The commission shall, at Washington, and in one or more places in each State and Territory where examinations are to take place, designate and select a suitable number of persons, not less than three, in the official service of the United States, residing in said State or Territory, after consulting the head of the department or office in which such persons serve, to be members of boards of examiners, and may at any time substitute any other person in said service living in such State or Territory in the place of any one so selected. Such boards of examiners shall be so located as to make it reasonably convenient and inexpensive for applicants to attend before them; and where there are persons to be examined in any State or Territory, examinations shall be held therein at least twice in each year. It shall be the duty of the collector, postmaster, and other officers of the United States, at any place outside of the District of Columbia where examinations are directed by the President or by said board to be held, to allow the reasonable use of the public buildings for holding such examinations, and in all proper ways to facilitate the same. *Sec. 3, ibid.*

Secretary.

Stenographer and messenger.

Boards of examiners.

Duties of public officers.

Frauds.
Sec. 5, *ibid.*

149. Any said commissioner, examiner, copyist, or messenger, or any person in the public service who shall willfully and corruptly, by himself or in cooperation with one

or more other persons, defeat, deceive, or obstruct any person in respect of his or her right of examination according to any such rules or regulations, or who shall willfully, corruptly, and falsely mark, grade, estimate, or report upon the examination or proper standing of any person examined hereunder, or aid in so doing, or who shall willfully and corruptly make any false representations concerning the same or concerning the person examined, or who shall willfully and corruptly furnish to any person any special or secret information for the purpose of either improving or injuring the prospects or chances of any person so examined, or to be examined, being appoined, employed, or promoted, shall for each such offense be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than one hundred dollars, nor more than one thousand dollars, or by imprisonment not less than ten days, nor more than one year, or by both such fine and imprisonment. *Sec. 5*, *ibid.*

*　　*　　*　　*　　*

Examination required for appointment and promotion.
Sec. 7, *ibid.*

150. After the expiration of six months from the passage of this act no officer or clerk shall be appointed, and no person shall be employed to enter or be promoted in either of the said classes now existing, or that may be arranged hereunder pursuant to said rules, until he has passed an examination, or is shown to be specially exempted from such examination in conformity herewith. But nothing herein contained shall be construed to take from those honorably discharged from the military or naval service any preference conferred by the seventeen hundred and fifty-fourth section of the Revised Statutes[1] nor to take from the President any authority not inconsistent with this act conferred by the seventeen hundred and fifty-third section[2] of said statutes; nor shall any officer not in the executive branch of the Government, or any person merely employed as a laborer or workman, be required to be classified hereunder; nor, unless by direction of the Senate, shall any person who has been nominated for confirmation by the Senate be required to be classified or to pass an examination. *Sec. 7*, *ibid.*

Preference claimants.
Sec. 1754, R. S.

Exclusions

Persons using intoxicating beverages ineligible to appointment.
Sec. 8, *ibid.*

151. No person habitually using intoxicating beverages to excess shall be appointed to, or retained in, any office, appointment, or employment to which the provisions of this act are applicable. *Sec. 8*, *ibid.*

---

[1] Paragraph 143, *ante.*

[2] Paragraph 142, *ante.*

Members of a family.
Sec. 9, *ibid.*

152. Whenever there are already two or more members of a family in the public service in the grades covered by this act, no other member of such family shall be eligible to appointment to any of said grades.[1] *Sec. 9, ibid.*

Recommendation by members of Congress.
Sec. 10, *ibid.*

153. No recommendation of any person who shall apply for office or place under the provisions of this act which may be given by any Senator or Member of the House of Representatives, except as to the character or residence of the applicant, shall be received or considered by any person concerned in making any examination or appointment under this act. *Sec. 10, ibid.*

Applications for examination to be accompanied by certificate of residence.
July 11, 1890, v. 26, p. 235.

154. Hereafter every application for examination before the Civil Service Commission for appointment in the departmental service in the District of Columbia shall be accompanied by a certificate of an officer, with his official seal attached, of the county and State of which the applicant claims to be a citizen, that such applicant was, at the time of making such application, an actual and bona fide resident of said county, and had been such resident for a period of not less than six months next preceding; but this provision shall not apply to persons who may be in the service and seek promotion or appointment in other branches of the Government. *Act of July 11, 1890 (26 Stat. L., 235).*

Preceding section not to apply to promotion, etc.

OATHS OF OFFICE.

Par.
155–156. Official oaths.
157. Removal of disabilities.
158. Oath of office.
Par.
159–160. Who may administer.
161. The same, chief clerks.
162. Custody of oaths.

Official oaths.
May 13, 1884, s. 2, v. 23, p. 22.

155. Section seventeen hundred and fifty-six of the Revised Statutes is hereby, repealed; and hereafter the oath to be taken by any person elected or appointed to any office of honor or profit either in the civil, military, or naval service, except the President of the United States, shall be as prescribed in section seventeen hundred and fifty-seven[2] of the Revised Statutes. But this repeal shall not affect the oaths prescribed by existing statutes in relation to the performance of duties in special or particular subordinate offices and employments. *Sec. 2, act of May 13, 1884 (23 Stat. L., 22).*

Not to affect existing rights, etc.
Ibid., s. 3.

156. The provisions of this act shall in no manner affect any right, duty, claim, obligation, or penalty now existing or already incurred; and all and every such right, duty, claim, obligation, and penalty shall be heard, tried, and determined, and effect shall be given thereto, in the same manner as if this act had not been passed. *Sec. 3*, *ibid.*

---

[1] Whether there are already two or more members of a family in the public service, as provided in section 9, is a question of fact to be determined by the Civil Service Commission. XVII Opin. Att. Gen., 554.

[2] Paragraph 158, *post.*

Removal of disabilities.
June 6, 1898, v. 30, p. 432.

157. The disability imposed by section three of the fourteenth amendment to the Constitution of the United States heretofore incurred is hereby removed. *Act of June 6*, *1898* (*30 Stat. L.*, *432*).

Oath of office.
July 11, 1868, c. 139, v. 15, p. 85; Feb. 15, 1871, c. 53, v. 16, p. 412.
Sec. 1757, R.S.

158. Whenever any person * * * is elected or appointed to any office of honor or trust under the Government of the United States, * * * he shall, before entering upon the duties of his office, take and subscribe in lieu of that oath the following oath:[1] "I, A. B., do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office[2] on which I am about to enter. So help me God." *Act of June 6*, *1898* (*30 Stat. L.*, *432*).

Who may administer oath.
Aug. 6, 1861, c. 64, s. 2, v. 12, p. 326.
Sec. 2, May 13, 1884, v. 23, p. 22.
Sec. 1758, R.S.

159. The oath of office required by the preceding section may be taken before any officer who is authorized either by the laws of the United States, or by the local municipal law, to administer oaths, in the State, Territory, or district where such oath may be administered.[3]

---

[1] The disabilities to hold office under the United States imposed under the authority conferred by section 3 of the fourteenth amendment to the Constitution, and which were embodied in section 1218 of the Revised Statutes, as modified by the acts of May 13, 1884 (23 Stat. L., 21), and March 31, 1896 (29 Stat L., 84), were, by the act of June 6, 1898, finally and entirely removed.

[2] For definition of office see U. S. *v.* Germaine, 99 U. S., 508, and Mouat *v.* U. S., 124 U. S., 303. See, also, note 1 to paragraph 4, *ante.* Clerks appointed by the head of an Executive Department are officers, and are required by the Constitution to take the oath of office. 1 Compt. Dec., 4. An employee whose compensation is fixed by the head of an Executive Department is not required to take a new oath of office when his compensation is increased. Ibid., 267. When by law a change is made in the compensation of an office, and in the manner in which such compensation shall be ascertained, the incumbent thereof is entitled from the date of the act to the compensation so fixed and is not required to take a new oath of office. Ibid., 313.

Under the act of February 14, 1889 (25 Stat. L., 670), S. was appointed from civil life to the position of major of engineers in the Army, and thereupon was placed on the retired list of the Army as of that grade; advised, that he must take the oath required by section 1756 of the Revised Statutes, and that this act would be in law a legal acceptance of the office, and, as such, a sufficient formal acceptance. XIX Opin. Att. Gen., 283.

Section 1757, Revised Statutes, and the act of May 13, 1884 (23 Stat. L., 22), which require generally that an officer shall take the oath of office prescribed "before entering upon the duties of his office" are directory only (U. S. *v.* Eaton, 169 U. S., 331), and a deputy clerk of a United States court whose acceptance of office on the same day he was appointed was evidenced by his entrance upon duty, and who subsequently took the oath, is entitled to compensation from that day. 4 Compt. Dec., 496.

[3] See paragraph 158, *ante.*

Taking oaths, acknowledgments, etc. Sept. 16, 1850, c. 52, v. 9, p. 458; July 29, 1854, c. 159, s. 1, v. 10, p. 315; June 22, 1874, c. 390, s. 20, v. 18, p. 186; Aug. 15, 1876, c. 304, v. 19, p. 206. Sec. 1778, R. S.

160. In all cases in which under the laws of the United States oaths or acknowledgments may now be taken or made before any justice of the peace of any State or Territory, or in the District of Columbia, they may hereafter be also taken or made by or before any notary public duly appointed in any State, district, or Territory, or any of the commissioners of the circuit courts, and when certified under the hand and official seal of such notary or commissioner, shall have the same force and effect as if taken or made by or before such justice of the peace.

Chief clerks of Executive Departments, etc., to administer oath of office free. Aug. 29, 1890, v. 26, p. 371.

United States commissioners and clerks may administer oaths. May 28, 1896, s. 19, v. 29, p. 184.

161. The chief clerks of the several Executive Departments and of the various bureaus and offices thereof in Washington, District of Columbia, are hereby authorized and directed, on application and without compensation therefor, to administer oaths of office to employees required to be taken on their appointment or promotion. *Act of August 29, 1890 (26 Stat. L., 371).* United States commissioners and all clerks of United States courts are authorized to administer oaths.[1] *Act of May 28, 1896 (29 Stat. L., 184).*

Custody of oath. July 2, 1862, c. 128, v. 12, p. 502. Sec. 1759, R. S.

162. The oath of office taken by any person pursuant to the requirements of section seventeen hundred and fifty-six,[2] or of section seventeen hundred and fifty-seven, shall be delivered in by him to be preserved among the files of the House of Congress, Department, or court to which the office in respect to which the oath is made may appertain.

SALARIES—DOUBLE SALARIES.

Par.
163. No payments to recess appointees.
164. Recess appointments.
165. No payment to officers holding over.
166. Double salaries.
Par.
167. Holding two offices.
168. Compensation for extra service.
169. Extra allowances.
170. Pay of officers in arrears.

Unauthorized office, no salary for. Feb. 9, 1863, c. 25, s. 2, v. 12, p. 646. Sec. 1760, R. S.

163. No money shall be paid from the Treasury to any person acting or assuming to act as an officer, civil, military, or naval, as salary, in any office when the office is not authorized by some previously existing law, unless such office is subsequently sanctioned by law.[3]

---

[1] See III. Comp., Dec., 65.

[2] Repealed by the act of May 13, 1884 (23 Stat. L., 22).

[3] An officer who is authorized to receive compensation "while necessarily employed" only must produce satisfactory evidence of his employment, and the necessity therefor, during the period for which he claims compensation. IV Compt. Dec., 424.

164. No money shall be paid from the Treasury, as salary, to any person appointed during the recess of the Senate to fill a vacancy in any existing office, if the vacancy existed while the Senate was in session and was by law required to be filled by and with the advice and consent of the Senate, until such appointee has been confirmed by the Senate.

No salaries to certain appointees to fill vacancies during recess of Senate.
Feb. 9, 1863, c. 25, s. 2, v. 12, p. 646.
Sec. 1761, R. S.

165. No money shall be paid or received from the Treasury, or paid or received from or retained out of any public moneys or funds of the United States, whether in the Treasury or not, to or by or for the benefit of any person appointed to or authorized to act in or holding or exercising the duties or functions of any office contrary to sections seventeen hundred and sixty-seven to seventeen hundred and seventy, inclusive; nor shall any claim, account, voucher, order, certificate, warrant, or other instrument providing for or relating to such payment, receipt, or retention be presented, passed, allowed, approved, certified, or paid by any officer, or by any person exercising the functions or performing the duties of any office or place of trust under the United States, for or in respect to such office or the exercising or performing the functions or duties thereof. Every person who violates any of the provisions of this section shall be deemed guilty of a high misdemeanor, and shall be imprisoned not more than ten years, or fined not more than ten thousand dollars, or both.

Salaries to officers improperly holding over.
Mar. 2, 1867, c. 154, s. 9, v. 14, p. 431.
Sec. 1762, R. S.

166. No person who holds an office the salary attached to which amounts to the sum of two thousand five hundred dollars shall receive compensation for discharging the duties of any other office, unless expressly authorized by law.

Double salaries.
Aug. 31, 1852, s. 18, v. 10, p. 100.
Sec. 1763, R. S.

167. No person who holds an office the salary or annual compensation attached to which amounts to the sum of two thousand five hundred dollars shall be appointed to or hold any other office to which compensation is attached unless specially heretofore or hereafter specially authorized thereto by law; but this shall not apply to retired officers of the Army or Navy whenever they may be elected to public office or whenever the President shall appoint them to office, by and with the advice and consent of the Senate.[1] *Sec. 2, act of July 31, 1894 (28 Stat. L., 205).*

Holding two offices by persons receiving $2,500 forbidden.
Sec. 2, July 31, 1894, v. 28, p. 205.

Retired officers excepted.

---

[1] The traditions and usages of the United States recognize the policy and propriety of employing, when necessary, the same person at the same time in two distinct capacities. Not to mention other familiar cases, there are the prominent examples of the diplomatic mission of Mr. Jay to England, under President Washington, while

Extra services, no compensation for, except especially authorized by law.
Aug. 26, 1842, c. 202, s. 12, v. 5, p. 525.
Sec. 1764, R. S.

168. No allowance or compensation shall be made to any officer or clerk, by reason of the discharge of duties which belong to any other officer or clerk in the same or any other Department; and no allowance or compensation shall be made for any extra services whatever, which any officer or clerk may be required to perform, unless expressly authorized by law.[1]

---

he was still Chief Justice of the United States; of the mission of Mr. Gallatin to London and St. Petersburg, to negotiate a peace, while Secretary of the Treasury under President Madison; and of Mr. Justice Nelson, sitting as a member of the commission which concluded the treaty of Washington, under President Grant. On the other hand, it is the undoubted aim of general legislation respecting salaries to gauge the work so as to give full employment to the capacities of the man likely to be appointed to do it, and to measure the pay according to the work. In construing statutes restraining the Executive from giving dual or extra compensation, courts have aimed to carry out the legislative intent by giving them sufficient flexibility not to injure the public service and sufficient rigidity to prevent Executive abuse. Landram *v.* U. S., 16 Ct. Cls., 74, 82. The great object has been to establish by law the compensation for public services, whether in offices or agencies, where the nature and character of the duties to be performed were sufficiently known and definite to enable Congress to form an estimate of its value and not leave it to the discretion of the head of an Executive Department. * * * These sections "can by no fair interpretation be held to embrace an employment which has no affinity or connection, either in its character or by law or usage, with the line of his official duty, and where the service to be performed is of a different character and for a different place and the amount of compensation is regulated by law. * * * The just and fair inference from these acts of Congress taken together is that no discretion is left to the head of a Department to allow an officer, who has a fixed compensation, any credit beyond his salary, unless the service he has performed is required by existing laws and the remuneration for them is fixed by law." Converse *v.* U. S., 21 How., 463, 470, 473; U. S. *v.* Brindle, 110 U. S., 688, 694; U. S. *v.* Shoemaker, 7 Wall., 338; Meigs *v.* U. S., 19 Ct. Cls., 497; XV Opin. Att. Gen., 608; 1 Compt. Dec., 286; 2 ibid., 33; Crosthwaite *v.* U. S., 30 Ct. Cls., 300.

A question having arisen as to the payment of a per diem to the members and certain employees of the Bering Sea Tribunal of Arbitration, it was held: As to Justice Harlan and Senator Morgan, that the terms of section 1763 of the Revised Statutes, as amended by the act of July 31, 1894 (28 Stat. L., 205), did not apply, as they had been appointed to separate and distinct offices not incompatible with the offices of justice of the Supreme Court, Senator of the United States, and retired judge. Payments to them were therefore allowed. U. S. *v.* Saunders, 120 U. S., 126. As to Senator Morgan, it was held that membership of a tribunal of arbitration did not constitute the holding of office under the authority of the United States under Article I, section 6, of the Constitution, and that Senator Morgan was not thereby prohibited from sitting thereon. The payment of per diem allowances to clerks and other regular employees of the United States, who had been detailed from the several Executive Departments to assist the tribunal in its labors, was held to be unauthorized under section 1765 of the Revised Statutes. *Held*, under this section, that a major and paymaster in the Army, detailed as disbursing officer of the Bering Sea Tribunal of Arbitration at Paris, could not receive any other allowances or emoluments than those specified in this section as allowable to officers of the Army. Compt. Dec., 1893–94, 275.

A compensation for extra services, where no certain allowance is fixed by law, can not be paid by the head of a Department to any officer of the Government who has, by law, a certain compensation in the office he holds. X Opin. Att. Gen., 31. The various provisions of law forbidding extra allowance or additional pay for extra service imply extra-service pay or allowance in the same office, not distinct service in distinct offices. VIII Opin. Att. Gen., 325. Where the service is one required by law, but not of any particular official, and compensation therefor is fixed by competent authority, and is appropriated, any officer who, under due authorization, performs the service is entitled to the compensation. XV Opin. Att. Gen., 608. See also Converse, admr., *v.* U. S., 21 How., 463; U. S. *v.* Shoemaker, 7 Wall., 338; Stansbury *v.* U. S., 8 Wall., 33; XIX Opin. Att. Gen., 121. But see for exception, section 7, act of June 3, 1896 (29 Stat. L., 235).

[1] Stansbury *v.* U. S., 8 Wall., 33.

Extra allowances.
Mar, 3, 1839, c. 82, s. 3, v. 5, p. 349; Aug. 23, 1842, c. 183, s. 2, v. 5, p. 510.
Sec. 1765, R.S.

169. No officer [1] in any branch of the public service, or any other person whose salary,[2] pay,[2] or emoluments [2] are fixed by law or regulations, shall receive any additional pay, extra allowance, or compensation, in any form whatever, for the disbursement of public money, or for any other service or duty whatever, unless the same is authorized by law and the appropriation therefor explicitly states that it is for such additional pay, extra allowance, or compensation.[3]

Officer in arrears.
Jan. 25, 1828, c. 2, v. 4, p. 246, May 20, 1836, c. 77, v. 5, p. 31.
Sec. 1766, R.S.

170. No money shall be paid to any person for his compensation who is in arrears [4] to the United States, until he has accounted for and paid into the Treasury all sums for which he may be liable. In all cases where the pay or salary of any person is withheld in pursuance of this section, the accounting officers of the Treasury, if required to do so by the party, his agent or attorney, shall report forthwith to the Solicitor of the Treasury the balance due, and the Solicitor shall, within sixty days thereafter, order suit to be commenced against such delinquent and his sureties.[5]

CRIMINAL OFFENSES.

Par.
171. Failure to make returns.
172. Political assessments.
173. Soliciting contributions.
174. The same, change of rank or compensation.
175. Political contributions forbidden.
176. Penalty.

Par.
177. Requesting political contributions prohibited.
178. Consideration for obtaining office prohibited.
179. Contributions for presents prohibited.

Failure to make returns or reports.

171. Every officer who neglects or refuses to make any return or report which he is required to make at stated

---

[1] An officer is one who is invested with an office, and an office is authority, granted by law, to exercise a function of Government. An employee is one who is employed under a contract to perform personal service. An office is distinguished from a public employment by the fact that in the one case the authority to perform a public service is derived from the law, while in the other it is derived from a contract. IV Compt. Dec., 696.

[2] Salary is fixed when it is at a stipulated rate for a definite period of time; pay or emolument is fixed when the amount is agreed upon and the service is defined. Hedrick *v.* U. S., 16 Ct. Cls., 88.

[3] See note to paragraph 167 supra. The provisions of section 1765, Revised Statutes, which prohibit the payment of additional compensation, apply to two classes of persons only, viz, officers in the public service and employees whose compensation is fixed by law or regulations. IV Compt. Dec. 696. See, also, ibid., 424.

[4] The phrase "who is in arrears to the United States," contained in the act of January 25, 1828 (sec. 1766, Revised Statutes), applies only to persons who, having had previous transactions of a pecuniary nature with the Government, are found, upon the settlement of those transactions, to be in arrears. III Opin. Att. Gen., 52. Where an officer of the Army assigned his pay accounts in payment of certain indebtedness, which accounts the Paymaster-General declined to pay, for the reason that, on the maturity thereof, the officer was in arrears to the United States; *held* that the refusal of the Paymaster-General was in accordance with section 1766 of the Revised Statutes. XVII Opin. Att. Gen., 30.

[5] See, as to effect on sureties, XX ibid., 447. This section does not apply to original vacancies. XVIII ibid., 28; see, also, XVII ibid., 476.

July 18, 1866, c. 201, s. 42, v. 14, p. 188.
Sec. 1780, R. S.

times by any act of Congress or regulation of the Department of the Treasury, other than his accounts, within the time prescribed by such act or regulation, shall be fined not more than one thousand dollars and not less than one hundred.

Political assessments.
Jan. 16, 1883, s. ii, v. 22, p. 403.

172. No Senator, or Representative, or Territorial Delegate of the Congress, or Senator, Representative, or Delegate elect, or any officer or employee of either of said Houses, and no executive, judicial, military, or naval officer of the United States, and no clerk or employee of any Department, branch, or bureau of the executive, judicial, or military or naval service of the United States, shall, directly or indirectly, solicit or receive, or be in any manner concerned in soliciting or receiving, any assessment, subscription, or contribution for any political purpose whatever from any officer, clerk, or employee of the United States, or any Department, branch, or bureau thereof, or from any person receiving any salary or compensation from moneys derived from the Treasury of the United States. *Sec. 11, act of January 16, 1883 (22 Stat. L., 403).*

Soliciting contributions for political purposes forbidden.
Sec. 12, *ibid.*

173. No person shall, in any room or building occupied in the discharge of official duties by any officer or employee of the United States mentioned in this act, or in any navy-yard, fort, or arsenal, solicit in any manner whatever, or receive any contribution of money or any other thing of value for any political purpose whatever. *Sec. 12, ibid.*

Change of rank or compensation
Sec. 13, *ibid.*

174. No officer or employee of the United States mentioned in this act shall discharge, or promote, or degrade, or in any manner change the official rank or compensation of any other officer or employee, or promise or threaten so to do, for giving or withholding or neglecting to make any contribution of money or other valuable thing for any political purpose.[1] *Sec. 13, ibid.*

Political contributions forbidden.
Sec. 14, *ibid.*

175. No officer, clerk, or other person in the service of the United States shall, directly or indirectly, give or hand over to any other officer, clerk, or person in the service of the United States, or to any Senator or Member of the House of Representatives, or Territorial Delegate, any money or other valuable thing on account of or to be applied to the promotion of any political object whatever. *Sec. 14, ibid.*

---

[1] The rules promulgated by the President on November 2, 1896, providing for certain classifications and exceptions, and regulating promotions in the civil service, do not regulate removals from office, except for political or religious opinions or affiliations. Carr *v.* Gordon, 82 Fed. Rep., 373.

The civil-service law does not prohibit removal or discharge, except for giving, withholding, or neglecting to make contributions of money for political purposes. Morgan *v.* Nunn, 84 Fed. Rep., 551.

The power of removal is a purely executive power which is not intrusted to the judicial branch of the Government. Keim *v.* U. S., 33 Ct. Cls., 174.

Penalty for violation of preceding sections.
Sec. 15, *ibid.*

176. Any person who shall be guilty of violating any provision of the four foregoing sections shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be punished by a fine not exceeding five thousand dollars, or by imprisonment for a term not exceeding three years, or by such fine and imprisonment both, in the discretion of the court. *Sec. 15, ibid.*

Requesting, etc., contributions by officers of Government for political purposes prohibited.
Sec. 6, Aug. 15, 1876, v. 19, p. 169.

177. All executive officers or employees of the United States not appointed by the President, with the advice and consent of the Senate, are prohibited from requesting, giving to, or receiving from, any other officer or employee of the Government, any money or property or other thing of value for political purposes; and any such officer or employee, who shall offend against the provisions of this section shall be at once discharged from the service of the United States; and he shall also be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in a sum not exceeding five hundred dollars. *Sec. 6, act of August 15, 1876 (19 Stat. L., 169).*

Prohibition upon taking consideration for procuring contracts, offices, etc.
July 16, 1862, c. 180, v. 12, p. 577; Feb. 25, 1863, c. 61, v. 12, p. 696. Sec. 1781, R.S.

178. Every member of Congress or any officer or agent of the Government who, directly or indirectly, takes, receives, or agrees to receive, any money, property, or other valuable consideration whatever, from any person for procuring, or aiding to procure, any contract, office, or place, from the Government or any Department thereof, or from any officer of the United States, for any person whatever, or for giving any such contract, office, or place, to any person whomsoever, and every person who, directly or indirectly, offers or agrees to give, or gives, or bestows any money, property, or other valuable consideration whatever, for the procuring or aiding to procure any such contract, office, or place, and every member of Congress who, directly or indirectly, takes, receives, or agrees to receive any money, property, or other valuable consideration whatever after his election as such member, for his attention to, services, action, vote, or decision on any question, matter, cause or proceeding which may then be pending, or may by law or under the Constitution be brought before him in his official capacity, or in his place as such member of Congress, shall be deemed guilty of a misdemeanor, and shall be imprisoned not more than two years and fined not more than ten thousand dollars. And any such contract or agreement may, at the option of the President, be declared absolutely null and void; and any member of Congress or officer convicted of a violation of this section, shall, moreover, be disqualified from holding any office of honor, profit, or trust under the Government of the United States.[1]

Prohibition of contributions, presents, etc., to superiors.
Feb. 1, 1870, c. 11, v. 16, p. 63.
Sec. 1784, R.S.

179. No officer, clerk, or employee in the United States Government employ shall at any time solicit contributions from other officers, clerks, or employees in the Government service for a gift or present to those in a superior official position; nor shall any such officials or clerical superiors receive any gift or present offered or presented to them as a contribution from persons in Government employ receiving a less salary than themselves; nor shall any officer or clerk make any donation as a gift or present to any official superior. Every person who violates this section shall be summarily dismissed from the Government employ.[2]

MISCELLANEOUS PROVISIONS.

Par.
180. Removal of office on account of sickness, report.
181. Restriction on payments for newspapers.

Par.
182. Preservation of Statutes at Large.

Removal of office.
Apr. 21, 1806, c. 41, s. 6, v. 2, p. 397.
Sec. 1776, R.S.

180. Whenever any public office is removed by reason of sickness which may prevail in the town or city where it is located, a particular account of the cost of such removal shall be laid before Congress.

Restrictions upon payments for newspapers, etc.
Mar. 3, 1839, c. 82, s. 3, v. 5, p. 349.
Sec. 1779, R.S.

181. No executive officer, other than the heads of Departments, shall apply more than thirty dollars, annually, out of the contingent fund under his control, to pay for newspapers, pamphlets, periodicals, or other books or prints not necessary for the business of his office.

---

[1] Sections 1781 and 1782 of the Revised Statutes make it illegal for an officer of the United States to have that sort of connection with a Government contract which an agent, attorney, or solicitor assumes when he procures, or aids in procuring, such contract for another, or when he prosecutes for another any claim against the Government founded thereon. XIV Opin. Att. Gen., 483. But there is in the statutes no general provision whereby officers of the executive branch of the Government are forbidden to contract directly with the Government as principals, in matters separate from their offices and in no way connected with the performance of their official duties; nor are those officers forbidden to be connected with such contracts, after they are procured, by acquiring an interest therein. Ibid.

[2] This section was held to be constitutional by the Supreme Court in Ex parte Curtis, 106 U. S., 371.

182. The various officers of the United States to whom, in virtue of their offices and for the uses thereof, copies of the United States Statutes at Large, published by Little, Brown and Company, have been or may be distributed at the public expense, by authority of law, shall preserve such copies, and deliver them to their successors respectively as a part of the property appertaining to the office. A printed copy of this section shall be inserted in each volume of the Statutes distributed to any such officers.

Preservation of copies of Statutes at Large.
Aug. 8, 1846, c. 100, s. 1, v. 9, p. 75.
Sec. 1777, R.S.

CHAPTER V.

THE DEPARTMENT OF THE TREASURY—THE ACCOUNTING OFFICERS.

Par.
183. The Treasury Department.
184–189. Accounts.
190–193. The Accounting Officers; the Comptroller of the Treasury.
194–214. The Auditors of the Treasury.
215–218. Accounts of line officers, etc.
219, 220. Claims; reports of claims allowed.
221, 222. Claims of officers and enlisted men for property lost or destroyed.
223–230. Reimbursement of States for expenses incurred in war with Spain.
231, 232. Compromise of claims.
233. Set-off.
234. Assignment of claims.
235–244. Prosecution of claims.
245–247. Debts due by or to the United States.
Par.
248, 249. Discharge of poor debtors.
250. Suits to recover balances due the United States.
251–264. Distress warrants.
265–270. Estimates.
271–275. Appropriations.
276–278. Permanent annual appropriations.
279–282. Application of balances.
283–290. The public moneys; the Treasurer; assistant treasurers, and depositories.
291–295. Disbursing agents.
296–298. Transfer of funds by Secretary of the Treasury.
299–304. Deposit of public money.
305–308. Tender.
309–312. Outstanding checks.

The Department of the Treasury.
Sept. 2, 1789, c. 12, s. 1, v. 1, p. 65.
Sec. 233, R. S.

183. There shall be at the seat of Government an Executive Department to be known as the Department of the Treasury, and a Secretary of the Treasury, who shall be the head thereof.

ACCOUNTS.

Par.
184. The fiscal year.
185. Rendition of accounts monthly.
186. Separate accounts required.
187. Transmission of accounts to Washington.
Par.
188. Report of delinquent officers.
189. Annual report of receipts and expenditures.

Commencement of the fiscal year.
Aug. 26, 1842, c. 207, ss. 1, 2, v. 5, p. 536; May 8, 1872, c. 139, s. 1, v. 17, p. 61; Mar. 3, 1873, c. 226, s. 1, v. 17, p. 486.
Sec. 227, R. S.

184. The fiscal year of the Treasury of the United States in all matters of accounts, receipts, expenditures, estimates, and appropriations, except accounts of the Secretary of the Senate for compensation and traveling expenses of Senators,[1] shall commence on the first day of July in each year; and all accounts of receipts and expenditures required by law to be published annually shall be prepared and published for the fiscal year as thus established. The fiscal year for the adjustment of the accounts of the Secretary of the Senate for compensation and traveling expenses of Senators[1] shall extend to and include the third day of July.[1]

---

[1] For other statutory provisions in relation to accounts, see the titles "*The Comptroller of the Treasury*" and "*The Auditors of the Treasury*" in the chapter entitled THE TREASURY DEPARTMENT, and the title "*Disbursing Officers*" in the chapter entitled THE STAFF DEPARTMENTS.

Accounts to be rendered monthly.

July 17, 1862, c. 199, s. 1, v. 12, p. 593; Mar. 2, 1867, Res. 48, v. 14, p. 571; July 15, 1870, c. 295, s. 15, v. 16, p. 334; Feb. 27, 1877, c. 69, v. 19, p. 249.

Sec. 12, act July 31, 1894, v. 28, p. 209.

Sec. 3622, R. S.

185. Every officer or agent of the United States who receives public money which he is not authorized to retain as salary, pay, or emolument, shall render his accounts monthly. Such accounts, with the vouchers necessary to the correct and prompt settlement thereof, shall be sent by mail or otherwise to the Bureau to which they pertain within ten days after the expiration of each successive month, and after examination there shall be passed to the proper accounting officer of the Treasury for settlement. Disbursing officers of the Navy shall, however, render their accounts and vouchers direct to the proper accounting officer of the Treasury. In case of the nonreceipt at the Treasury or proper Bureau of any accounts within a reasonable and proper time thereafter, the officer whose accounts are in default shall be required to furnish satisfactory evidence of having complied with the provisions of this section. Nothing herein contained shall, however, be construed to restrain the heads of any of the Departments from requiring such other returns or reports from the officer or agent, subject to the control of such heads of Departments, as the public interest may require.

Separate accounts required.

Mar. 3, 1809, c. 28, s. 1, v. 2, p. 535.

Sec. 3623, R. S.

186. All officers, agents, or other persons receiving public moneys, shall render distinct accounts of the application thereof according to the appropriation under which the same may have been advanced to them.

Transmission of monthly, etc., accounts.

Sec. 12, July 31, 1894, v. 28, p. 209.

Mar. 2, 1901, v. 31, p. 910.

187. All monthly accounts shall be mailed or otherwise sent to the proper officer at Washington within ten days after the end of the month to which they relate, and quarterly and other accounts within twenty days after the period to which they relate, and shall be transmitted to and received by the Auditors within sixty days of their actual receipt at the proper office in Washington in the case of monthly, and sixty days in the case of quarterly and other accounts. Should there be any delinquency in this regard at the time of the receipt by the Auditor of a requisition for an advance of money, he shall disapprove the requisition, which he may also do for other reasons arising out of the condition of the officer's accounts for whom the advance is requested; but the Secretary of the Treasury may

Auditor may disapprove requisitions on delinquency, etc.

---

[1] For other statutory provisions in relation to accounts, see the titles "*The Comptroller of the Treasury*" and "*The Auditors of the Treasury*" in the chapter entitled THE TREASURY DEPARTMENT, and the title "*Disbursing Officers*" in the chapter entitled THE STAFF DEPARTMENTS.

overrule the Auditor's decision as to the sufficiency of these latter reasons: *Provided*, That the Secretary of the Treasury shall prescribe suitable rules and regulations, and may make orders in particular cases, relaxing the requirement of mailing or otherwise sending accounts, as aforesaid, within ten or twenty days, or waiving delinquency, in such cases only in which there is, or is likely to be, a manifest physical difficulty in complying with the same, it being the purpose of this provision to require the prompt rendition of accounts without regard to the mere convenience of the officers, and to forbid the advance of money to those delinquent in rendering them: *Provided further*, That should there be a delay by the administrative Departments beyond the aforesaid twenty or sixty days in transmitting accounts, an order of the President [or, in the event of the absence from the seat of Government or sickness of the President, an order of the Secretary of the Treasury] in the particular case shall be necessary to authorize the advance of money requested: *And provided further*, That this section shall not apply to accounts of the postal revenue and expenditures therefrom, which shall be rendered as now required by law.[1] *Sec. 12, act of July 31, 1894 (28 Stat. L., 209); act of March 2, 1901 (31 ibid., 910).*

Provisos. Secretary of the Treasury to prescribe rules for rendition of accounts.

Delays in submitting accounts.

Secretary of Treasury to report delinquent officers.
Sec. 4, May 28, 1896, v. 29, p. 179.

188. The Secretary of the Treasury shall, on the first Monday of January in each year, make report to Congress of such officers and administrative departments and offices of the Government as were, respectively, at any time during the last preceding fiscal year delinquent in rendering or transmitting accounts to the proper offices in Washington and the cause therefor, and in each case indicating whether the delinquency was waived, together with such officers, including postmasters and officers of the Post-Office Department, as were found upon final settlement of their accounts to have been indebted to the Government, with the amount of such indebtedness in each case, and who, at the date of making report, had failed to pay the same into the Treasury of the United States.[2] *Sec. 4, act of May 28, 1896 (29 Stat. L., 179).*

Annual report of receipts and expenditures.
July 31, 1894, s. 15, v. 28, p. 210.

189. It shall be the duty of the Secretary of the Treasury annually to lay before Congress, on the first day of the regular session thereof, an accurate, combined statement of the receipts and expenditures during the last preceding fiscal year of all public moneys, including those of the Post-Office Department, designating the amount of the receipts, whenever practicable, by ports, districts, and States, and the expenditures, by each separate head of appropriation. *Sec. 15, act of July 31, 1894 (28 Stat. L., 210).*

---

[1] Amended by the insertion of the clause in brackets by section 4 of the act of March 2, 1895. (28 Stat. L., 817.)

[2] Section 8 of the act of July 31, 1894, provides "that the balances that may be certified from time to time by the auditors in the settlement of public accounts shall be final and conclusive upon the Executive Departments of the Government, except that

THE ACCOUNTING OFFICERS.

THE COMPTROLLER OF THE TREASURY.

Par.		Par.	
190.	The Comptroller of the Treasury.	192.	Decisions to be final.
191.	To prescribe forms of accounts.	193.	May direct settlement of particular accounts.

The Comptroller of the Treasury.
Sec. 4, July 31, 1894, v. 28, p. 205.

190. The offices of Commissioner of Customs, Deputy Commissioner of Customs, Second Comptroller, Deputy Second Comptroller, and Deputy First Comptroller of the Treasury are abolished, and the First Comptroller of the Treasury shall hereafter be known as Comptroller of the Treasury. He shall perform the same duties and have the same powers and responsibilities (except as modified by this act) as those now performed by or appertaining to the First and Second Comptrollers of the Treasury and the Commissioner of Customs; and all provisions of law not inconsistent with this act, in any way relating to them or either of them, shall hereafter be construed and held as relating to the Comptroller of the Treasury. His salary shall be five thousand five hundred dollars per annum. There shall also be an Assistant Comptroller of the Treasury, to be appointed by the President, with the advice and consent of the Senate, who shall receive a salary

LIBRARY OF THE UNIVERSITY OF CALIFORNIA

---

any person whose accounts may have been settled, the head of a Department, or of the board, commission, or establishment, not under the jurisdiction of an Executive Department, or the Comptroller of the Treasury may, within a year, obtain a revision of the account by the Comptroller of the Treasury, whose decision upon such revision shall be final and conclusive upon the executive branch of the Government: *Provided*, That the Secretary of the Treasury may, when in his judgment the interests of the Government require it, suspend payment and direct the reexamination of any account." Sec. 8, act of July 31, 1894 (28 Stat. L., 207).

Section 260 of the Revised Statutes requires that the Secretary of the Treasury shall lay before Congress at the commencement of each regular session, accompanying his annual statement of the public expenditure, the reports which may be made to him by the Auditors charged with the examination of the accounts of the Department of War and the Department of the Navy, respectively, showing the application of the money appropriated for those Departments for the preceding year.

This enactment replaces section 12, act of July 31, 1894, *in pari materia.*

Under authority conferred by this section and by the act of December 20, 1899 (31 Stat. L., 1), the Secretary of the Treasury has relaxed the requirements of paragraph 627 of the Army Regulations by extending the time of mailing to the 20th day of each month. See the title *Accounting* in the chapter entitled THE STAFF DEPARTMENTS; see, also, G. O. 211, A. G. O., of 1899, and G. O. 42, A. G. O., of 1900.

of five thousand dollars per annum,[1] and a chief clerk in the office of the Comptroller of the Treasury, who shall receive a salary of two thousand five hundred dollars per annum. *Sec. 4, act of July 31, 1894 (28 Stat. L., 205).*

Comptroller to prescribe forms, etc.
Sec. 5, *ibid.*

191. The Comptroller of the Treasury shall, under the direction of the Secretary of the Treasury, prescribe the forms of keeping and rendering all public accounts, except those relating to the postal revenues and expenditures therefrom.[2] *Sec. 5, ibid.*

Comptroller's decisions to govern accounts.
Sec. 8, *ibid.*

192. Disbursing officers, or the head of any Executive Department, or other establishment not under any of the Executive Departments, may apply for and the Comptroller of the Treasury shall render his decision upon any question involving a payment to be made by them or under them, which decision, when rendered, shall govern the Auditor and the Comptroller of the Treasury in passing upon the account containing said disbursement. *Sec. 8, ibid.*

Comptroller may direct settlement of particular accounts.
July 31, 1894, v. 28, p. 206.
Sec. 6, *ibid.*
Sec. 271, R. S.

193. The Comptroller of the Treasury, in any case where, in his opinion, the interests of the Government require it, shall direct any of the auditors forthwith to audit and settle any particular account which such auditor is authorized to audit and settle. *Sec. 6, ibid.*

THE AUDITORS OF THE TREASURY.

Par.
194. The Auditors, general duties.
195, 196. Auditor for the War Department, duties.
197. Recovery of debts.
198. Certificates of balances; revision.
199. Reexamination of accounts.
200. Certificate of differences on revision.
201. Settlements of accounting officers conclusive.
202. Examination of claims.
203. Revision of decisions by Comptroller.
204. To preserve accounts.
205. Transcripts as evidence.
Par.
206. Settled claims not to be reopened.
207. Rules by Secretary of Treasury.
208. Rules by heads of Departments.
209. Requisitions, warrants, advances.
210. Division of Bookkeeping and Warrants.
211. Offices of Comptroller and Auditors not new.
212. Transfer of duties.
213. Date of operation of new system.
214. Books and papers in District of Columbia to be accessible to accounting officers.

Auditors of the Treasury.
Sec. 3, July 31, 1894, v. 28, p. 206.

194. The Auditors of the Treasury shall hereafter be designated as follows: The First Auditor as Auditor for the Treasury Department; the Second Auditor as Auditor for the War Department; the Third Auditor as Auditor for the Interior Department; the Fourth Auditor as Auditor for the Navy Department; the Fifth Auditor as Auditor for the State and other Departments; the Sixth Auditor as Auditor of the Post-Office Department. The designations of the deputy auditors and other subordinates shall correspond with those of the Auditors. And each deputy auditor, in addition to the duties now required to be performed by him, shall sign, in the name of the Auditor, such letters and papers as the Auditor may direct. *Sec. 3, act of July 31, 1894 (28 Stat. L., 206).*

---

[1] By instructions of the Comptroller of the Treasury, issued under the authority conferred by section 4, act of July 31, 1894 (28 Stat. L., 205), it was ordered that all questions arising in the Departments of War, Navy, and the Interior should be decided by the Assistant Comptroller. Order of Comptroller of January 19, 1898, IV Compt. Dec., 726.

[2] So much of section 248, Revised Statutes, as authorizes the Secretary of the Treasury to prescribe the forms of keeping and rendering all public accounts, except those relating to the postal revenue and expenditures therefrom, is, by section 5 of the act of July 31, 1894, vested in the Comptroller of the Treasury. 28 Stat. L., 206.

Duties.

195. Accounts shall be examined by the Auditors as follows: * * * Second. The Auditor for the War Department shall receive and examine all accounts of salaries and incidental expenses of the office of the Secretary of War and all bureaus and offices under his direction, all accounts[1] relating to the military establishment, armories and arsenals, national cemeteries, fortifications, public buildings and grounds under the Chief of Engineers, rivers and harbors, the Military Academy, and to all other business within the jurisdiction of the Department of War, and

Auditor for War Department.
Sec. 7, *ibid.*

---

[1] Under the provisions of the act of July 31, 1894, the Comptroller of the Treasury is authorized to render decisions, in advance of the settlement of accounts, only upon the request of a disbursing officer or the head of an Executive Department, as provided in section 8 of said act. 1 Compt. Dec., 87.

Under section 8 of the act of July 31, 1894, the Comptroller of the Treasury is authorized to render decisions, on the application of a disbursing officer or the head of an Executive Department, only upon questions involved in payments to be made by them or under them, and until the head of a Department having control of an appropriation determines to apply it to a particular purpose there is no question which can be properly submitted for the Comptroller's decision. Ibid., 89. Ibid., 31, 139. The Comptroller is not authorized to render a decision at the request of the Secretary of the Treasury when the question involved concerns the use of an appropriation under the control of the Secretary of War. Ibid., 317.

When an expense has not yet been incurred, and a decision of the Comptroller is desired for the guidance of a Department, the request therefor should be presented by the head of the Department having control of the appropriation, and not by the disbursing officer. Ibid., 500.

Under section 8 of this statute, authorizing an application by the head of an Executive Department to the Comptroller of the Treasury for the revision of an account settled by an Auditor, the Comptroller has no jurisdiction to entertain such an application when made by the head of a bureau of a Department. Ibid., 199. Nor can such a decision be rendered upon the application of an Auditor. Ibid., 78; 4 ibid., 653, 727.

Requests for the decision of the Comptroller under section 8 of the act of July 31, 1894, must be made by the disbursing officer himself, and not by an attorney authorized to represent him in the settlement of his account. Ibid., 502. The Comptroller is authorized to render a decision upon the request of a disbursing officer only when the question submitted is one involved in a payment which he has been directed, by general or special order, to make. Ibid., 500.

Under the act of July 31, 1894, the Auditors of the Treasury are not authorized to render decisions in advance of the settlement of accounts, such authority being, by section 8 of said act, granted only to the Comptroller of the Treasury. 1 Compt. Dec., 94.

certify the balances arising thereon to the Division of Bookkeeping and Warrants, and send forthwith a copy of each certificate to the Secretary of War.[1] *Sec. 7, ibid.*

Auditors to recover debts.
Sec. 4, *ibid.*

196. The Auditors, under the direction of the Comptroller of the Treasury, shall superintend the recovery of all debts finally certified by them, respectively, to be due to the United States. *Sec. 4, ibid.*

Duties of Auditors for War and Navy Departments.
Mar. 3, 1817, c. 45, ss. 5, 6, v. 3, p. 367.
Sec. 283, R. S.

197. The Auditors charged with the examination of the accounts of the Departments of War and of the Navy shall keep all accounts of the receipts and expenditures of the public money in regard to those Departments, and of all debts due to the United States on moneys advanced relative to those Departments; shall receive from the Comptroller the accounts which shall have been finally adjusted, and shall preserve such accounts, with their vouchers and certificates, and record all requisitions drawn by the Secretaries of those Departments, the examination of the accounts of which has been assigned to them. They shall annually, on the first Monday in November, severally report to the Secretary of the Treasury the application of the money appropriated for the Department of War and the Department of the Navy, and they shall make such reports on the business assigned to them as the Secretaries of those Departments may deem necessary and require.

Certified balances conclusive on Executive Departments, etc.
Sec. 8, *ibid.*

198. The balances which may from time to time be certified by the Auditors to the Division of Bookkeeping and Warrants, or to the Postmaster-General, upon the settlements of public accounts, shall be final and conclusive upon the Executive branch of the Government, except that any person whose accounts may have been settled, the head of the Executive Department, or of the board, commission, or establishment not under the jurisdiction of an Executive Department, to which the account pertains, or the Comptroller of the Treasury, may, within a year, obtain a revision of the said account by the Comptroller of the Treasury, whose decision upon such revision shall be final

Revision.

---

[1] The act of July 16, 1892, contained the following requirement: "Hereafter nothing in section two hundred and seventy-seven of the Revised Statutes shall be so construed as to prevent the Second Auditor of the Treasury from disallowing claims for arrears of pay and bounty in cases where it appears from the records and files of his office that payment in full has already been made to the soldier himself, or to his widow or legal heirs: *Provided*, That if any person whose claim may be disallowed be dissatisfied with the action of the Auditor, he may, within six months, appeal to the Second Comptroller; otherwise the Auditor's action shall be deemed final and conclusive and be subject to revision only by Congress or the proper courts." (27 Stat. L., 194.) See 4 Compt. Dec., 471.

and conclusive upon the Executive Branch of the Government.[1]

Reexaminations.

199. The Secretary of the Treasury may, when in his judgment the interests of the Government require it, suspend payment and direct the reexamination of any account. * * * Sections one hundred and ninety-one and two hundred and seventy of the Revised Statutes are repealed. *Sec. 8, ibid.*

Certificate of differences on revision.
Sec. 8, *ibid.*

200. Upon a certificate by the Comptroller of the Treasury of any differences ascertained by him upon revision, the Auditor who shall have audited the account shall state an account of such differences and certify it to the division of bookkeeping and warrants, except that balances found and accounts stated as aforesaid by the Auditor for the Post-Office Department for postal revenues and expenditures therefrom shall be certified to the Postmaster-General. *Sec. 8, ibid.*

Accepting payment on Auditor's settlement conclusive.

201. Any person accepting payment under a settlement by an auditor shall be thereby precluded from obtaining a revision of such settlement as to any items upon which payment is accepted; but nothing in this act shall prevent an Auditor from suspending items in an account in order to

Suspensions.
Sec. 8, *ibid.*

---

[1] This paragraph expressly repeals section 1 of the act of March 30, 1868 (sec. 191, Rev. Stat.). The clause "shall be conclusive upon the Executive Departments of the Government," which formed a part of the repealed section, was enacted to settle a long-pending dispute between the accounting officers and the heads of departments as to their respective powers over claims and accounts, and has been interpreted to relate "only to matters of accounting in the Treasury Department, and of ascertaining the balance in each particular account which shall be drawn from the Treasury. * * * It makes conclusive upon the executive branch of the Government only the 'balances' stated by the accounting officers and their 'decision thereon' for the purpose of determining for what amounts, if any, warrants may be drawn on the Treasury. * * * It does not make such decisions conclusive upon the head of a department in the exercise of his discretion as to orders to be issued to his subordinates in such connections as the one now under consideration." Billings *v.* U. S., 23 Ct. Cls., 166; McKee *v.* United States, 12 ibid., 504. It was held in the case of Surgeon Billings (23 Ct. Cls., 166) that the War Department had authority to send a surgeon to the International Medical Congress at London at the expense of the Government, that being a military service which a surgeon could be required to render. In the case of Paymaster Smith (24 Ct. Cls., 209) it was held that the employment of experts before a court-martial was within the legal and proper discretion of the Secretary of War. In the case of the United States *v.* Jones (18 How., 92, 95) the court held "that the Secretary of the Navy represents the President and exercises his power on the subjects confided to his Department. He is responsible to the people and to the law for any abuse of the powers intrusted to him. His acts and decisions on subjects submitted to his jurisdiction and control by the Constitution and laws do not require the approval of any officer of any other department to make them valid and conclusive. The accounting officers of the Treasury have not the burden cast upon them of reviewing the judgments, correcting the supposed mistakes, or annulling the orders of the heads of departments." See, also, U. S. *v.* McDaniel, 7 Pet., 1, 14; U. S. *v.* Eliason, 16 Pet., 291; Brown *v.* U. S., 113 U. S., 568, 571; Edwards *v.* Darby, 12 Wheat., 206; U. S. *v.* Pugh, 99 U. S., 265; Parkhurst *v.* U. S., 29 Ct. Cls., 399.

When the Government is estopped from further controverting a question adjudicated by a court of competent jurisdiction it is the duty of the accounting officers obtain further evidence or explanations necessary to their settlement. When suspended items are finally settled, a revision may be had as in the case of the original settlement. Action upon any account or business shall not be delayed awaiting applications for revision: *Provided*, That the Secretary of the Treasury shall make regulations fixing the time which shall expire before a warrant is issued in payment of an account certified as provided in sections seven and eight of this act. *Sec. 8, ibid.*

Examination of certain claims. Sec. 14, *ibid.*

202. In the case of claims presented to an Auditor which have not had an administrative examination, the Auditor shall cause them to be examined by two of his subordinates independently of each other. *Sec. 14, ibid.*

Decisions of Auditors to be examined, etc., by Comptroller. Sec. 8, *ibid.*

203. All decisions by Auditors making an original construction or modifying an existing construction of statutes shall be forthwith reported to the Comptroller of the Treasury, and items in any account affected by such decisions shall be suspended and payment thereof withheld until the Comptroller of the Treasury shall approve, disapprove, or modify such decisions and certify his actions to the Auditor. All decisions made by the Comptroller of the

---

to follow the decision in subsequent settlements of the parties' accounts. The legislation of Congress and the decisions of the Supreme Court unmistakably indicate that judgments of this court, not appealed from, are obligatory upon the Government as upon the claimant, and are intended to be guides and precedents for the Executive Departments. Meigs *v.* U. S., 20 Ct. Cls., 181; U. S. *v.* O'Grady, 22 Wall., 641; Wis. Cent. R. R. Co. *v.* U. S., 164 U. S., 190.

Under section 8 of the act of July 31, 1894, an appeal will not lie to the Comptroller of the Treasury except from the final certificate of an auditor. A suspension of action upon a case by an auditor is not a final decision of such officer. Ibid., 381. An appeal to the Comptroller from the action of an auditor will not lie until the auditor has taken final action in the case. A suspension for further evidence is not a final decision upon which an appeal can be based. I Compt. Dec., 448, 500.

In a case where the Auditor for the War Department disallowed the claim of a soldier for pay and allowances upon the ground of desertion, and, subsequent to said settlement, the Secretary of War has removed the charge of desertion and issued a discharge certificate under the act of March 2, 1889: *Held*, That the application for pay and allowances upon said amendment of record is a new claim, coming within the jurisdiction of the Auditor for the War Department, and is not to be regarded as an appeal under section 8, act of July 31, 1894, or an application for a rehearing. III Compt. Dec., 144; IV ibid., 303, 332, 471, 622, 723.

Under the act of July 31, 1894, an auditor has no jurisdiction to review his own final action in the settlement of an account, but such settlement can be reopened only on a revision thereof by the Comptroller of the Treasury within a year, as provided in section 8 of said act. I Compt. Dec., 27. See, also, ibid., pp. 31, 78, 87, 139, 199, 317, 381, 448, 500, 502; II ibid., pp. 4, 401, 510.

Where an auditor disallows certain items in an account which have been allowed claimant by a paymaster, it amounts to a formal settlement of the account of such claimant, from which an appeal may be taken under section 8 of the act of July 31, 1894. II Compt. Dec., 4. Under section 8 of the act of July 31, 1894, appeals from disallowances by the auditors must be taken within a year from the date of the settlement. If taken after the expiration of a year, the Comptroller is without jurisdiction to entertain the appeal. Ibid., 510.

For a prohibition of the payment, by deduction from balance found due, of attorneys' fees in certain cases, see paragraph 222, *post.*

Treasury under this act shall be forthwith transmitted to the Auditor or Auditors whose duties are affected thereby. *Sec. 8, ibid.*

Auditors to preserve accounts.
Sec. 8, *ibid.*

204. The auditors shall, under the direction of the Comptroller of the Treasury, preserve with their vouchers and certificates all accounts which have been finally adjusted. *Sec. 8, ibid.*

Certification of Treasury records, etc.
Sec. 886, R. S.
Sec. 17, *ibid.*
Sec. 10, Mar. 2 1895, v. 28 p. 809.

205. The transcripts from the books and proceedings of the Department of the Treasury, and the copies of bonds, contracts, and other papers, provided for in section eight hundred and eighty-six of the Revised Statutes,[1] shall hereafter be certified by the Secretary or an Assistant Secretary of the Treasury under the seal of the Department. *Sec. 17, ibid., as amended by sec. 10, act of March 2, 1895 (28 Stat. L., 809).*

Settled claims not reopened.
Sec. 23, *ibid.*

206. Nothing in this act shall be construed to authorize the reexamination and payment of any claim or account which has heretofore been disallowed or settled.[2] *Sec. 23, ibid.*

Secretary of Treasury to make rules for new methods of accounting, etc.
Sec. 22, *ibid.*

207. It shall be the duty of the Secretary of the Treasury to make appropriate rules and regulations for carrying out the provisions of this act, and for transferring or preserving books, papers, or other property appertaining to any office or branch of business affected by it. *Sec. 22, ibid.*

---

[1] Paragraph 1820, *post.*

[2] The accounting officers have no jurisdiction to reopen settlements made by their predecessors, because a subsequent decision of the courts has so changed the construction of the law under which the settlements were made as to warrant a different result in the settlements. 2 Compt. Dec., 401.

Settled accounts in the Treasury Department, where the United States have acted on the settlement and paid the balance therein found due, can not be opened or set aside years afterwards merely because some of the prescribed steps in the accounting which it was the duty of a head of a department to see had been taken had in fact been omitted, or on account of technical irregularities when the remedy of the party against the United States is barred by the statute of limitation and the remedies of the United States are intact, owing to its not being subject to an act of limitation. U. S. *v.* Johnston, 124 U. S., 236, 1 Compt. Dec., 192.

The act of July 31, 1894, does not take from the accounting officers the right to reopen accounts which have been settled, either by themselves or their predecessors, for the purpose of correcting mistakes of fact arising from errors of calculation, or upon the production of newly discovered material evidence, or for fraud or collusion. 4 Compt. Dec., 303. But see 1 ibid., 27; 2 ibid., 210. The Comptroller has the exclusive right to reopen an account which has been revised by himself or his predecessors. 4 ibid., 303. Before the expiration of a year the right of revision by the Comptroller is exclusive, and an Auditor can not reopen an account within that period. After the expiration of a year from the date of settlement, an Auditor has the exclusive right to reopen an account settled by himself or his predecessors. Ibid.

Under section 8 of the act of July 31, 1894, the Comptroller of the Treasury is authorized to revise, upon his own motion, all items embraced in an account, including items upon which payment has been accepted; and, in particular instances, where justice requires it, such authority may be exercised in favor of a claimant. 4 Compt. Dec., 623.

Rules, etc., by heads of departments, etc.
Sec. 22, *ibid.*

208. It shall also be the duty of the heads of the several Executive Departments and of the proper officers of other Government establishments, not within the jurisdiction of any Executive Department, to make appropriate rules and regulations to secure a proper administrative examination of all accounts sent to them, as required by section twelve of this act, before the transmission to the Auditors, and for the execution of other requirements of this act in so far as the same relate to the several departments or establishments. *Sec. 22, ibid.*

REQUISITIONS FOR FUNDS.

Requisitions for advances of funds.
Sec. 11, *ibid.*

209. Every requisition for an advance of money[1] before being acted on by the Secretary of the Treasury, shall be sent to the proper Auditor for action thereon as required by section twelve of this act.

Warrants.

All warrants, when authorized by law and signed by the Secretary of the Treasury, shall be countersigned by the Comptroller of the Treasury, and all warrants for the payment of money shall be accompanied either by the Auditor's certificate, mentioned in section seven of this act, or by the requisition for advance of money, which certificate or requisition shall specify the particular appropriation to which the same should be charged, instead of being specified on the warrant, as now provided by section thirty-six hundred and seventy-five of the Revised Statutes; and shall also go with the warrant to the Treasurer, who shall return the certificate or requisition to the proper Auditor, with the date and amount of the draft issued indorsed thereon. Requisitions for the payment of money on all audited accounts, or for covering money into the Treasury, shall not hereafter be required. And requisitions for advances of money shall not be countersigned by the Comptroller of the Treasury. *Sec. 11, ibid.*

DIVISION OF BOOKKEEPING AND WARRANTS.

The Division of Bookkeeping and Warrants.
Sec. 10, *ibid.*

210. The Division of Warrants, Estimates, and Appropriations in the office of the Secretary of the Treasury is hereby recognized and established as the Division of Bookkeeping and Warrants. It shall be under the direction of

---

[1] Section 8 of the act of July 31, 1894, has no application to the questions respecting the advance of funds which, under this section, are subject to the decision of the Auditor, with a review by the Secretary of the Treasury. 1 Compt. Dec., 409.

the Secretary of the Treasury as heretofore. Upon the books of this division shall be kept all accounts of receipts and expenditures of public money except those relating to the postal revenues and expenditures therefrom; and sections three hundred and thirteen and so much of sections two hundred and eighty-three and thirty-six hundred and eighty-five of the Revised Statutes as require those accounts to be kept by certain Auditors and the Register of the Treasury are repealed. The duties of the Register of the Treasury shall be such as are now required of him in connection with the public debt and such further duties as may be prescribed by the Secretary of the Treasury. *Sec. 10, ibid.*

MISCELLANEOUS PROVISIONS.

Comptroller, Auditors, etc., not new offices. Sec. 9, *ibid.*

211. This act,[1] so far as it relates to the First Comptroller of the Treasury and the several Auditors and Deputy Auditors of the Treasury, shall be held and construed to operate merely as changing their designations and as adding to and modifying their duties and powers, and not as creating new officers. *Sec. 9, ibid.*

Transfer of duties to Auditors. Sec. 9, *ibid.*

212. All laws not inconsistent with this act,[1] relating to the Auditors of the Treasury in connection with any matter shall be understood in each case to relate to the Auditor to whom this act assigns the business of the Executive Departments or other establishments concerned in that matter. *Sec. 9, ibid.*

New accounting system in force October 1, 1894. Sec. 24, *ibid.*

213. The provisions of sections three to twenty-three inclusive of this act[1] shall be in force on and after the first day of October, eighteen hundred and ninety-four.[2] *Sec. 24, ibid.*

---

[1] Act of July 31, 1894 (28 Stat. L., 206).

[2] The act of July 31, 1894, also contained the requirement that "all accounts stated by the Auditors before the 1st day of October, 1894, and then pending for settlement in the offices of the First or Second Comptroller, or the Commissioner of Customs, shall be revised by the Comptroller of the Treasury in the manner provided by existing law, and the balances arising thereon shall be certified to the Division of Bookkeeping and Warrants." Sec. 21, act of July 31, 1894, 28 Stat. L., 206.

For section 3 of the act of July 31, 1894, see paragraph 194; for section 4 of the same statute see paragraph 196; for section 5 see paragraph 195; for section 6 see paragraph 193; for section 7 see paragraph 195; for section 8 see paragraphs 199, 200, 201, 203, 204, and for section 9 see paragraphs 211 and 212; for section 10 see paragraph 210; for section 11 see paragraph 209; for section 12 see paragraphs 185 and 187; for section 14 see paragraph 202; for section 17 see paragraph 205; for section 22 see paragraphs 207 and 208; for section 23 see paragraph 206. Section 13 relates to the accounts of certain subordinate officers of the Department of Justice; section 15 to an annual report of expenditures to be rendered to Congress by the Secretary of the Treasury; sections 16, 18, and 19 amend sections 307, 2639, and 3743 of the Revised Statutes; section 20 relates to the duties of collectors of customs.

Examination of books, papers, etc., by Comptroller and Auditors.
March 15, 1898, s. 5, v. 30, p. 316.

214. All books, papers, and other matters relating to the accounts of officers of the Government in the District of Columbia shall at all times be subject to inspection and examination by the Comptroller of the Treasury and the Auditor of the Treasury authorized to settle such accounts, or by the duly authorized agents of either of said officials.[1] *Sec. 5, act of March 15, 1898 (30 Stat. L., 316).*

ACCOUNTS OF LINE OFFICERS AND PAYMASTERS.

Par.
215. Settlement of accounts of line officers.
216. Same of paymasters for advance bounties.
217. Overpayments by paymasters.
218. Return of discharge certificates.

Settlement of accounts of army officers.
Mar. 29, 1867, Res. No. 22, v. 15, p. 25.
Sec. 278, R. S.

215. The Auditor of the Treasury for the War Department shall audit and settle the accounts of line officers of the Army, to the extent of the pay due them for their services as such, notwithstanding the inability of any such line officer to account for property intrusted to his possession, or to make his monthly reports or returns, if such Auditor shall be satisfied by the affidavit of the officer or otherwise that the inability was caused by the officer's having been a prisoner in the hands of the enemy, or by any accident or casualty of war.[2]

Settlement of advance bounties paid by paymasters.
Mar. 3, 1863, c. 78, s. 6, v. 12, p. 743.
Sec. 280, R. S.

216. Any moneys paid by a paymaster in the Army to an enlisted man as an advance bounty shall be allowed in the settlement of the accounts of the paymaster, notwithstanding the discharge of such enlisted man before serving the time required by law to entitle him to payment of such moneys.

Settlement of overpayments by paymasters.
Mar. 16, 1868, c. 29, v. 15, p. 42.
Sec. 281, R. S.

217. The proper accounting officers are authorized, in the settlement of the accounts of the paymasters of the Army, to allow such credits for overpayments made in good faith on public account, since the fourteenth day of April, eighteen hundred and sixty-one, and before the sixteenth day of March, eighteen hundred and sixty-eight, as shall appear to them, by such vouchers and testimony as they shall require, to be just.[3]

---

[1] This enactment replaces a similar provision in the act of February 19, 1897 (29 Stat. L., 550).

[2] The duties of the Second Auditor of the Treasury were, by section 7 of the act of July 31, 1894 (28 Stat. L., 206), devolved on the Auditor of the Treasury for the War Department.

[3] The first section of the act of June 23, 1870 (16 Stat. L., 166), authorizing the accounting officers of the Treasury, in settling the accounts of disbursing officers of the War and Navy Departments during the rebellion, to allow, under certain circumstances, such credits for overpayments, loss of funds, vouchers, and property, as they may deem just and reasonable, have no application to the case of a disbursing officer who failed to account for money received, and who never presented any claim for a credit for overpayment, or loss of funds, vouchers, or property. U. S. *v.* Wade, 75 Fed. Rep., 261.

218. In all cases where it has become necessary for any officer or enlisted man of the Army to file his evidence of honorable discharge from the military service of the United States, to secure the settlement of his accounts, the accounting officer with whom it has been filed shall, upon application by said officer or enlisted man, deliver to him such evidence of honorable discharge; but his accounts shall first be duly settled, and the fact, date, and amount of such settlement shall be clearly written across the face of such evidence of honorable discharge, and attested by the signature of the accounting officer before it is delivered.

Evidence of honorable discharge to be returned to officers and enlisted men.
May 4, 1870, Res. No. 42, v. 16, p. 374.
Sec. 282, R. S.

CLAIMS.

219. All claims and demands whatever by the United States or against them, and all accounts whatever in which the United States are concerned, either as debtors or creditors, shall be settled and adjusted in the Department of the Treasury.[1]

All claims to be settled in the Department of the Treasury.
Sec. 236, R. S.

220. The Secretary of the Treasury shall, at the commencement of each session of Congress, report the amount due each claimant whose claim has been allowed in whole or in part to the Speaker of the House of Representatives and the presiding officer of the Senate, who shall lay the same before their respective Houses for consideration. *Sec. 2, act of July 7, 1884 (23 Stat. L., 254).*

Report of claims allowed.
July 7, 1884, s. 2, v. 23, p. 254.

---

[1] Sections 300 A and 300 B of the Revised Statutes authorized certain claims of loyal citizens, for property furnished to the armies of the United States during the war of the rebellion to be prosecuted before the Quartermaster-General and the Commissary-General of Subsistence. By section 2 of the act of June 16, 1874 (18 Stat. L., 75), this jurisdiction was extended, but was finally withdrawn by the operation of the acts of March 3, 1883 (chapters 93 and 116; 22 Stat. L., 457 and 485).

The act of March 3, 1849 (9 Stat. L., 414; secs. 3482–3487, R. S.), provided for the reimbursement of officers and men for horses and other private property lost in the military service. Several limitations upon the filing of claims under this act have been enacted by Congress; but the general limitation will be found in section 2 of the act of January 9, 1883 (22 Stat. L., 401), which contains the requirement that "all claims arising under the act approved March 3, 1849, and all acts amendatory thereof, which shall not be filed in the proper department within one year after the passage of this act shall be forever barred and shall not be received, considered, or audited by any department of the Government." Section 2 of the act of August 13, 1888 (25 Stat. L., 437), suspended the limitation as to the presentation of claims for losses of horses during the war of the rebellion for three years. The act of March 3, 1849, therefore became inoperative in respect to general claims on August 13, 1889, and as to claims for horses, etc., lost during the rebellion, on August 13, 1891.

In the performance of the duty imposed by this statute the Secretary of the Treasury is not subject to the control of the courts of the United States, and the duty not being ministerial in character a writ of mandamus will not lie to compel the allowance of a claim presented under the statute. Kendall *v.* Stockton, 12 Pet., 524; Decatur *v.* Paulding, 14 Pet., 497, 515; U. S. *v.* Guthrie, 17 How., 284, 304; Brashear *v.* Mason, 6 How., 92, 102. Such action on the part of the courts would also be in the nature of entertaining a suit against the United States, which is not within their jurisdiction. U. S. *v.* Guthrie, 17 How., 284, 305.

Where a claim within the scope of his official authority was submitted to the Secretary of the Treasury, and by him decided adversely, it is incompetent for his official successor to set the same aside or reopen it unless there has been a mistake in a matter

CLAIMS OF OFFICERS AND ENLISTED MEN FOR PROPERTY LOST AND DESTROYED.

Accounting officers to settle claims of officers and men in military service for property lost or destroyed.

221. The proper accounting officers of the Treasury are hereby authorized and directed to examine into, ascertain, and determine the value of the private property belonging to officers and enlisted men in the military service of the United States which has been, or may hereafter be, lost or destroyed in the military service, under the following circumstances:

When loss or destruction was without fault or negligence.

First. When such loss or destruction was without fault or negligence on the part of the claimant.[1]

When shipped by order on unseaworthy vessel.

Second. Where the private property so lost or destroyed was shipped on board an unseaworthy vessel by order of any officer authorized to give such order or direct such shipment.[2]

---

of fact or material testimony discovered and produced. V Opin. Att. Gen., 664. A head of a department of the Government has no right to review the acts of his predecessors, except to correct an error of calculation. He can not recall a credit given or allowance made. Such action is for the judiciary. U. S. *v.* Bank of Metropolis, 15 Pet., 377.

The accounting officers of the Treasury have no jurisdiction to settle claims for unliquidated damages arising from the torts of the agents of the Government. II Compt. Dec., 174, 487; McKee *v.* U. S., 12 Ct. Cls., 556; Dennis *v.* U. S., 20 ibid, II; XIV Opin. Att. Gen., 24. Nor have the accounting officers such jurisdiction over a claim for unliquidated damages not arising from the tortious act of an officer of the Government. II Compt. Dec., 487; I ibid, 261; II ibid, 174.

[1] Clause first stands alone as an independent basis for a claim, and was intended to reach cases not covered by the other two clauses. This clause is broader in its scope than the two succeeding clauses, but absence of fault or negligence must be proven if the claim is made under it. Broad as this clause is, it does not cover every case of loss an officer or soldier might sustain in his "reasonable, useful, and necessary" property while he was in the military service. II Compt. Dec., 644, 647.

Stating the proposition in other words, it does not make the United States the absolute insurer, against all accidents and contingencies, of the reasonable, useful, and necessary property of officers and soldiers. To entitle a person to reimbursement under this clause the loss or destruction must be without fault or negligence, directly or indirectly, near or remote, of the owner, and must have been caused by, or resulted from, some exigency or necessity of the military service. It must reasonably be attributable to the fact that it was held in the military service, whereby the owner was deprived, in some degree, of the control over it which he would have in civil life, and where it would be subjected to dangers not ordinarily incident to its use in civil life. Under all conditions of a use of such personal property as is covered by the law it is subject to deterioration and loss; but in the military service the dangers are greater and peculiar because of the environments of that service. It was to provide against personal loss resulting from these special and peculiar dangers that this law was enacted. Any other view of the law would make the United States the insurer of all personal property necessarily used in its service by officers and soldiers. This can not have been the intent of Congress. If it be held that absence of fault or negligence is the only condition precedent to reimbursement an officer would be entitled to payment for a horse dying from old age, or a uniform, side arms, or household furniture worn out in use. III Compt. Dec., 637.

[2] The true construction of clause second is that the claimant is entitled to reimbursement without being required to show, affirmatively, that he was not guilty of negligence, "where the private property was shipped on board an unseaworthy vessel by order of any officer authorized to give such order or direct such shipment." The leading idea in this clause is that the loss would be attributable to the unseaworthiness of the vessel, and that the soldier sustaining the loss would have no

When lost in saving property of United States.

Third. Where it appears that the loss or destruction of the private property of the claimant was in consequence of his having given his attention to the saving of the property belonging to the United States which was in danger at the same time and under similar circumstances. And the amount of such loss so ascertained and determined shall be paid out of any money in the Treasury not otherwise appropriated, and shall be in full for all such loss or damage: *Provided*, That any claim which shall be presented and acted on under authority of this act shall be held as finally determined, and shall never thereafter be reopened or considered: *And provided further*, That this act shall not apply to losses sustained in time of war or hostilities with Indians: *And provided further*, That the liability of the Government under this act shall be limited to such articles of personal property as the Secretary of War, in his discretion, shall decide to be reasonable, useful, necessary, and proper for such officer or soldier while

Mar. 3, 1885, v. 23, p. 350.

---

option as to the shipment on said vessel and no responsibility for a loss under such circumstances. II Compt. Dec., 647.

To entitle a person to recover under the first clause of the act the following facts, among others, must be established:

1. The loss must be of private property of the officer or soldier.

"The articles must not only belong to him, but must be used by him and for him alone, as it were, personal to him in the performance of his duty."

2. The property must be such as the Secretary of War shall decide to be reasonable, to be useful, and to be necessary for such officer or soldier while in quarters, engaged in the public service in the line of duty.

3. The loss must have been without fault or negligence, in any degree, of the claimant.

4. The loss must have been caused by some exigency or necessity of the military service, such as would naturally be attributable to and would flow from such service. To establish a case under this act the property must have been lost or destroyed in the military service; not merely while it was in use in that service, but because it was in that service. Being in that service must have been the proximate cause of the loss.

5. The loss must *not* have been caused by the natural wear and tear, or deterioration, of the articles in ordinary use in the service. Inherent defects in articles, on account of which they are unable to stand the ordinary strain of the service, will prevent recovery.

6. Payment must be limited to the commercial value of the articles at the time of their loss, and not exceed the value of such articles as it was necessary for the officer or soldier to have in the service. Unusually expensive articles can not be considered necessary. The purchase price of an article is more likely to be a fair measure of its value than the estimate placed upon it after the purchaser obtains possession of it. The purchase price should not be exceeded without good cause shown.

7. Proof of absence of fault or negligence must state all the circumstances, and be sufficiently elaborate to enable the accounting officers to reach their own conclusions. Mere opinions or conclusions of witnesses, without full statement of facts upon which they are based, are of little value.

8. Any want of proper care either in the claimant or his servant, or the incompetency of the servant, will prevent recovery.

9. It is the duty of owners to care for their property; any voluntary relaxation of that care by intrusting it to others, is negligence within the meaning of the law.

Although under clause second the claimant is not required to show affirmatively that he was not guilty of fault or negligence, this will not be understood as precluding the Government from showing that he was so guilty, and, if so found, he will not be entitled to recover.

in quarters, engaged in the public service, in the line of duty: *And provided further*, That all claims now existing shall be presented within two years and not after from the passage of this act; and all such claims hereafter arising be presented within two years from the occurrence of the loss or destruction.[1] *Act of March 3, 1885 (23 Stat. L., 350).*

Claims to be presented in two years.

No deductions for attorneys' fees. June 6, 1900, v. 31, p. 637.

222. In the settlement of claims of officers, soldiers, sailors, and marines, or their representatives, and all other claims for pay and allowances within the jurisdiction of the Auditor for the War Department or the Auditor for the Navy Department, presented and filed hereafter in which it is the present practice to make deductions of attorneys' fees from the amount found due, no deductions of fees for attorneys or agents shall hereafter be made, but the draft, check, or warrant for the full amount found due shall be delivered to the payee in person or sent to his bona fide post-office address (residence or place of business). *Act of June 6, 1900 (31 Stat. L., 637).*

REIMBURSEMENT OF STATES AND TERRITORIES FOR EXPENSES INCURRED IN RAISING AND EQUIPPING VOLUNTEERS DURING THE WAR WITH SPAIN.

Par.
223, 224. Reimbursement of States.
225. Rates of pay.
226. Transportation to State rendezvous.
227. Subsistence.
228. Expenses.
229. Transportation of troops.
230. Limitation.

Reimbursement of States, etc., July 8, 1898. v. 30, p. 730.

223. The Secretary of the Treasury is hereby, directed, out of any money in the Treasury not otherwise appropriated, to pay to the governor of any State or Territory, or to his duly authorized agents, the reasonable costs, charges, and expenses that have been incurred by him in aiding the United States to raise the Volunteer Army in the existing war with Spain, by subsisting, clothing, supplying, equipping, paying, and transporting men of his State or Territory who were afterwards accepted into the Volunteer Army of the United States: *Provided*, That the transportation paid for shall be only the transportation of such men from the place of their enrollment for service in the Volunteer Army of the United States to the place of their acceptance into the same by the United States mustering officer, and that the names of the men transported shall appear on the muster rolls of the Volunteer Army of the United States: *And provided further*, That such claims shall be settled upon proper vouchers to be filed and passed upon by the proper accounting officers of the Treasury: *And provided further*, That, in cases where the money to pay said costs, charges, and expenses has been, or may hereafter, be borrowed by the governors or their respective States or Territories, and interest is paid, or may hereafter be paid, on the same, by the governors or their States or Territories, from the time it was or may be so borrowed to the time of its refundment by the United States, or thereafter, such interest shall not be refunded by the United States; nor shall any interest be paid the governors or their States or Territories on the amounts paid out by them, nor any other amount refunded or paid than is in this act expressly mentioned.[1] *Act of July 8, 1898 (30 Stat. L., 730.)*

---

[1] Under clause third the claimant must show that he was not guilty of fault or negligence other than of neglecting his own property in his efforts to save that of the Government. III Compt. Dec., 636; see, also, II ibid., 644; III ibid., 636, 659; XIX Opin. Att. Gen., 693; G. O. 35, A. G. O., 1896; G. O. 39, A. G. O., 1897; Circular 1, A. G. O., 1897.

Paragraph 807, Army Regulations of 1901, contains the following requirement:

"For private property of officers or enlisted men lost or destroyed in the military service, without fault or negligence on the part of the claimant, 'where the private property so lost or destroyed was shipped on board an unseaworthy vessel by order of any officer authorized to give such order or direct such shipment,' or 'where it appears that the loss or destruction of the private property of the claimant was in consequence of his having given his attention to the saving of the property belonging to the United States which was in danger at the same time and under similar circumstances,' compensation may be made under the provisions of the act of Congress approved March 3, 1885. Proceedings of a board of survey will, if possible, accompany each application under this act, showing fully the circumstances attending the loss * * * ."

224. That the act entitled "An act to reimburse the governors of States and Territories for expenses incurred by them in aiding the United States to raise and organize and supply and equip the Volunteer Army of the United States in the existing war with Spain," approved July eighth, eighteen hundred and ninety-eight, be so amended that the Secretary of the Treasury shall be, and is hereby, authorized to allow, in the settlement of the claims of the governors of States and Territories for reimbursement under the provisions of the said act, expenses incurred after as well as before July eighth, eighteen hundred and ninety- The same. Mar. 3, 1899, v. 30, p. 1356.

---

[1] All claims for expenses incurred by any State or Territory in aiding the United States to raise the Volunteer Army in the existing war with Spain by subsisting, clothing, supplying, equipping, paying, and transporting men of such State or Territory who were afterwards accepted into the Volunteer Army of the United States should be forwarded to the Secretary of the Treasury for audit and settlement by the accounting officers of the Treasury, in accordance with the terms of the above-quoted act. G. O., 97, A. G. O., 1898.

The act of March 3, 1899 (30 Stat. L., 1356), paragraph 230, *post*, contains a requirement that claims under this statute must be presented on or before January 1, 1902, or be forever barred.

eight: *Provided*, That no reimbursement shall be made for service of members of the National Guard, or organized militia, or naval reserves of any State or Territory who were not accepted into the Volunteer Army of the United States, and no reimbursement shall be allowed for payments made to any person in excess of the pay and allowances authorized by the laws of the State or Territory for the grade in which he was accepted into the Volunteer Army of the United States. That the compensation allowed by the laws of the States and Territories to officers and men of the National Guard, or militia, or naval reserves of said States and Territories shall be allowed to the States and Territories, or the governors of the States and Territories, as pay for such officers and men of said National Guard, or militia, or naval reserves as appeared and remained at the place of muster, and who were afterwards received into the service of the United States for the period between the date of assembly at the rendezvous and the date they were mustered into the United States service. *Act of March 3, 1899* (*30 Stat. L.*, *1356.*)

Rates of pay. Ibid.

225. In all States and Territories where no laws exist for the payment of the officers and men of the National Guard, or militia, or naval reserves, there shall be allowed to said States and Territories, or the governors of said States and Territories, for the officers the same pay as allowed officers in the Regular Army holding the same rank, and for the men, one dollar per day, for such officers and men as appeared and remained at the place of muster and were afterwards received into the service of the United States for the period between the date of assembly at the rendezvous and the date they were mustered into the service of the United States: *Provided further*, That for all officers and men of the National Guard, or militia, or naval reserves of the States and Territories, who appeared at the rendezvous for muster, and were rejected by the medical examiner or mustering officer, pay shall be allowed for the same to the States and Territories or the governors of States and Territories, at the several rates as fixed as aforesaid from the date of assembly to the date of their rejection: *Provided further*, That where States and Territories have not paid amounts to the officers and men or any part thereof the pay allowed them by this Act, the same shall be paid by the States and Territories direct to the officers and men, and no money allowed by this Act for officers and men shall be covered into the treasury of the State or Territory. *Ibid.*

226. Under the appropriation made by said Act the Secretary of the Treasury is hereby authorized to reimburse the governor of any State or Territory for reasonable expenses incurred by him for the actual transportation of the members of organized militia, or National Guard, or naval reserves of his State from the place of company, battalion, or regimental rendezvous to the State rendezvous, or place designated for examination and acceptance of the members of such organization into the Volunteer Army of the United States, and the actual transportation from such State rendezvous, or such place designated for examination and acceptance, to their respective company, battalion, or regimental rendezvous of such men as were rejected by the medical examiner or mustering officer: *Provided*, That no reimbursement shall be made for the transportation of any man who did not present himself for enrollment in the Volunteer Army of the United States as provided by law: *And provided further*, That the provisions of this section shall apply also to payments made by the governor of any State or Territory for the actual transportation of individual volunteers who presented themselves for enrollment in the Volunteer Army of the United States and who were rejected by the medical examiner or mustering officer. *Sec. 2, ibid.*

Transportation to State rendezvous.
Sec. 2, *ibid.*

227. Nothing in said Act of July eighth, eighteen hundred and ninety-eight, shall be so construed as to prohibit the reimbursement of the governor of any State or Territory for reasonable expenses incurred for the subsistence of the members of any organization of the organized militia or National Guard, or naval reserves of his State or Territory after having been called out by the governor on or after April twenty-fifth, eighteen hundred and ninety-eight: *Provided*, That such organizations shall afterwards have been accepted into the Volunteer Army of the United States. *Sec. 3, ibid.*

Subsistence.
Sec. 3, *ibid.*

228. The expenses incurred by the governors of States in carrying out the provisions of this Act shall be paid to them, notwithstanding any unsettled accounts, claims, or indebtedness of the United States against their States, and without prejudice to such unsettled accounts: *Provided*, That when such unsettled account is caused by a default in payment of principal or interest on any bonds or stock issued or guaranteed by any State, the ownership of which is vested in the United States, the Secretary of the Treasury be, and he is hereby, authorized and directed to institute any act or proceeding which he may consider advisable

Unsettled accounts, expenses.
Sec. 4, *ibid.*

against such State or its representatives to secure the payment of the principal and interest of said bonds or stocks: *And provided further*, That where the governor of any State or Territory, or any officer of the Army detailed as mustering officer of volunteers, or any commander of a company or companies, or troop or troops, or battery or battalion, or regiment, or brigade, has purchased or authorized the purchase of supplies or equipments, or incurred any necessary expense for the comfort of the men in camp or rendezvous, and said supplies were used and equipments were subsequently taken into the United States service by said volunteers, and no receipts given to such military officer, the certificate to that effect of the governor of the State or Territory to which the volunteers belonged, shall be held sufficient to authorize the settlement and payment of such account on investigation, if the Treasury Department shall be satisfied of the fact of such purchase of such equipment and supplies, or that such necessary expenses were incurred and such use of such supplies, or such taking of such equipments into the United States service, and the voucher or vouchers of said officers be produced by said governor. *Sec. 4, ibid.*

Transportation of troops. Sec. 5, *ibid.*

229. That the Secretary of the Treasury be, and is hereby, authorized to pay, out of any money in the Treasury not otherwise appropriated, the just and proper account or claim of any railroad, transportation company, or person for transportation of men or troops from place of enrollment to point of rendezvous, furnished at the request of the Quartermaster-General of the Army or his agents, or at the request of any United States mustering officer or other officer authorized by the Secretary of War to enroll, muster, or mobilize volunteers for the war with Spain; and also to pay such just and proper accounts as may be presented for transportation back from point of rendezvous to place of enrollment of men who volunteered and were rejected by the medical examiner or mustering officer: *Provided*, That the amount allowed and paid for such transportation shall not be in excess of the rates charged for transporting troops of the United States under like circumstances.

All claims under the provision of this Act must be filed in the office of the Auditor for the War Department, and must be supported by proper vouchers or other conclusive evidence of interest. *Sec. 5, ibid.*

Limitation on claims. Sec. 6, *ibid.*

230. All claims for reimbursement under this Act or the Act of July eighth, eighteen hundred and ninety-eight,

shall be presented in itemized form to the Treasury Department on or before January first, nineteen hundred and two, or be forever barred.[1] *Sec. 6, ibid.*

COMPROMISE OF CLAIMS AND PURCHASE ON EXECUTION.

Compromise of claims.
Mar. 3, 1863, c. 76, s. 10, v. 12, p. 740.
U. S. *v.* George, 6 Blatch., 406.
Sec. 3469, R.S.

231. Upon a report by a district attorney, or any special attorney or agent having charge of any claim in favor of the United States, showing in detail the condition of such claim, and the terms upon which the same may be compromised, and recommending that it be compromised upon the terms so offered, and upon the recommendation of the Solicitor of the Treasury, the Secretary of the Treasury is authorized to compromise such claim accordingly. But the provisions of this section shall not apply to any claim arising under the postal laws.[2]

Purchase on execution.
May 26, 1824, c. 172, s. 2, v. 4, p. 51.
Sec. 3470, R.S.

232. At every sale, on execution, at the suit of the United States, of lands or tenements of a debtor, the United States may, by such agent as the Solicitor of the Treasury shall appoint, become the purchaser thereof; but in no case shall the agent bid in behalf of the United States a greater amount than that of the judgment for which such estate may be exposed to sale, and the costs. Whenever such purchase is made, the marshal of the district in which the sale is held shall make all needful conveyances, assignments, or transfers to the United States.

SET-OFF.

Amount of debt due United States to be withheld by Secretary of Treasury in paying judgments, etc., of debtor against United States.
Act Mar. 3, 1875, v. 18, p. 481.

233. When any final judgment recovered against the United States or other claim duly allowed by legal authority, shall be presented to the Secretary of the Treasury for payment, and the plaintiff or claimant therein shall be indebted to the United States in any manner, whether as principal or surety, it shall be the duty of the Secretary to withhold payment of an amount of such judgment or claim equal to the debt thus due to the United States; and if such plaintiff or claimant assents to such set-off, and discharges his judgment or an amount thereof equal to said debt or claim, the Secretary shall execute a discharge of

---

[1] For statute conferring authority upon the Secretary of War to investigate claims for loss of, or injury to, property during the war with Spain, see the Act of June 6, 1900 (31 Stat. L., 632), par. 137, *ante*.

[2] *Compromise of claims.*—Claims against the United States which are disputed by the officers authorized to adjust such accounts may be compromised, and if the claimant voluntarily enters into such a compromise and accepts a smaller sum than the claim and executes a discharge in full for the whole claim, he is bound by the adjustment and can not sue for what he has voluntarily relinquished. Sweeny *v.* U. S., 17 Wall., 75, 77; Mason *v.* U. S., ibid, 67.

Balance, how paid to claimant.

Interest.

the debt due from the plaintiff to the United States. But if such plaintiff, or claimant, denies his indebtedness to the United States, or refuses to consent to the set-off, then the Secretary shall withhold payment of such further amount of such judgment, or claim, as in his opinion will be sufficient to cover all legal charges and costs in prosecuting the debt of the United States to final judgment. And if such debt is not already in suit, it shall be the duty of the Secretary to cause legal proceedings to be immediately commenced to enforce the same, and to cause the same to be prosecuted to final judgment with all reasonable dispatch. And if in such action judgment shall be rendered against the United States, or the amount recovered for debt and costs shall be less than the amounts so withheld as before provided, the balance shall then be paid over to such plaintiff by such Secretary, with six per cent interest thereon for the time it has been withheld from the plaintiff.[1] *Act of March 3, 1875 (18 Stat. L., 481).*

ASSIGNMENTS OF CLAIMS, POWERS OF ATTORNEY.

Assignments of claims void, unless, etc.

Feb. 26, 1853, c. 81, s. 1, v. 10, p. 170; July 29, 1846, c. 66, v. 9, p. 41.

Sec. 3477, R. S.

234. All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments, and powers of attorney, must recite the warrant for payment, and must be acknowledged by the person making them, before an officer having authority to take acknowledgments of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgment, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same.[1]

---

[1] *Set-off.*—When a person is both debtor and creditor of the United States, in any form, the officers of the Treasury Department in settling the accounts not only have the power, but are required, in the proper discharge of their duties, to set off the one indebtedness against the other, and to allow and certify for payment only the balance found due on one side or the other. * * * The right of set-off in such cases exists independently of these enactments (sec. 1766, Rev. Stat., and the act of March 3, 1875; 1 Sup. to Rev. Stat., 185), and is founded upon what is now section 236 of the Revised Statutes. Taggart *v.* U. S., 17 Ct. Cls., 322, 327; McKnight's Case, 13 *ibid.*, 292; Bonnafon's Case, 14 ibid., 489; Howes *v.* U. S., 24 ibid., 170; Reeside *v.* Walker, 11 How., 272, 290. The power in the matter of set-offs conferred upon the Secretary of the Treasury by the act of March 3, 1875 (18 Stat. L., 481), is exclusive, and can not be exercised by the courts. U. S. *v.* Griswold, 30 Fed. Rep., 604.

Settled accounts in the Treasury Department, where the United States have acted on the settlement and paid the balance therein found due, can not be opened or set aside years afterwards merely because some of the prescribed steps in the accounting which it was the duty of a head of a Department to see had been taken had in fact been omitted, or on account of technical irregularities when the remedy of the party against the United States is barred by the statute of limitation and the remedies of the United States are intact, owing to its not being subject to an act of limitation. U. S. *v.* Johnston, 124 U. S., 236, 1 Compt. Dec., 192.

---

[1] The mischiefs which this statute were intended to prevent were mainly two: (1) The danger that the rights of the Government might be embarrassed by having to deal with several persons instead of one, and by the introduction of a party who was a stranger to the original transaction; (2) that, by a transfer of such claim against the Government to one or more persons not originally interested in it, the way might be conveniently opened to such improper influences in prosecuting the claim before the Departments, the courts, or the Congress as desperate cases, when the reward is contingent on success, so often suggest. In Spofford *v.* Kirk (97 U. S., 490) the Supreme Court had said that the greater of the two evils was the possible combination of interests and influences in the prosecution of claims which might have no real foundation. Goodman *v.* Niblack, 102 U. S., 560; Bailey *v.* U. S., 109 U. S., 438; Milliken *v.* Barrow, 65 Fed. Rep., 888, 892.

The provisions of section 3477 of the Revised Statutes, prohibiting and making void transfers of any claim against the United States before the allowance of such claim, apply only to claims existing at the time of the transfer, in the form of a right to demand money from the United States, and not to cases where, at the very inception of the transaction out of which a claim against the United States may arise, one party assigns to another the contingent profits he hopes to make, but which do not then exist, and can only be secured by the loan of the assignee's money to the assignor. Milliken *v.* Barrow, 65 Fed. Rep., 888.

The word "claim" as used in section 3477, Revised Statutes, which provides that "all transfers and assignments made of any claim upon the United States * * * shall be absolutely null and void" unless made as prescribed therein, comprehends all demands against the United States for the payment of money whether liquidated or unliquidated; and an assignment of a judgment against the United States, made before the issuing of a warrant for the payment thereof, is within the meaning of the statute and void. IV Compt. Dec., 196; I ibid., 276. The provisions of section 3477, Revised Statutes, touching transfers and assignments of claims against the United States, and powers of attorney, etc., for receiving payment thereof, do not apply to undisputed claims or any claim about which no question is made as to its validity or extent. XVII Opin. Att. Gen., 545; XXI ibid., 75; XX ibid., 578.

The provision of the Revised Statutes (section 3477), making void transfers and assignments of claims against the United States, relates to voluntary assignments, and does not extend to transfers by operation of law, or interfere with the equitable doctrine of subrogation. Amer. Tob. Co. *v.* U. S., 32 Ct. Cls., 207; II Comp. Dec., 49. While section 3477 of the Revised Statutes declares null and void all powers of attorney given prior to the settlement of a claim and the issuing of a warrant in payment, yet when payments are made upon valid, unrevoked, and undisputed powers of attorney, credit must be given in settlements of the disbursing officer making them. I Compt. Dec., 431; ibid., 119; ibid., 453. Under the decisions of the courts the accounting officers are required, notwithstanding the provisions of section 3477 of the Revised Statutes, to credit disbursing officers with payments actually made by them under powers of attorney, provided it is shown that, at the time of such payment, such powers are undisputed and have not been revoked, either by the voluntary action of the principal or by his death. Ibid., 142. Payments may be made to a corporation under a contract entered into by an attorney duly authorized to act for the corporation in the making of such contract. II Compt. Dec., 30; ibid., 295. See also decision of Secretary of War of November 7, 1895, in Circular 13, A. G. O., 1895.

The assignment of a quartermaster's voucher, unless made "after the allowance of such a claim" and in conformity with all the other requirements of section 3477 of the Revised Statutes, is "absolutely null and void." The exigencies of the war and of the Government service immediately after the war, which at one time were relied upon to support the practice of paying the assignees of such vouchers, can not be made available in deciding cases now arising. 3 Dig. 2nd Compt. Dec., par. 156.

PROSECUTION OF CLAIMS.

Par.
235. Oath of claimant or attorney.
236. Administration of oath.
237. Claims of disloyal persons.
238. Limitation on prosecution.
239. Penalty for false claims.
240. Suits for recovery of penalty.
241. Duty of district attorney.
242. Rights of person bringing suit.
243. Limitation of suits.
244. Rules respecting attorneys.

Oath by persons prosecuting claims. July 17, 1862, c. 205, s. 1, v. 12, p. 610. Sec. 3478, R. S.

235. Any person prosecuting claims, either as attorney or on his own account, before any of the Departments or bureaus of the United States, shall be required to take the oath of allegiance, and to support the Constitution of the United States, as required of persons in the civil service.[1] (*See secs. 1756, 1757, R. S.*)

Who may administer the oath. July 17, 1862, c. 205, s. 2, v. 12, p. 610. Sec. 3479, R. S.

236. The oath provided for in the preceding section may be taken before any justice of the peace, notary public, or other person who is legally authorized to administer an oath in the State or district where the same may be administered.

Claims of disloyalists. Mar. 2, 1867, Res. 46, v. 14, p. 571. Sec. 3480, R. S.

237. It shall be unlawful for any officer to pay any account, claim, or demand against the United States which accrued or existed prior to the thirteenth day of April, eighteen hundred and sixty-one, in favor of any person who promoted, encouraged, or in any manner sustained the late rebellion, or in favor of any person who during such rebellion was not known to be opposed thereto, and distinctly in favor of its suppression; and no pardon heretofore granted, or hereafter to be granted, shall authorize the payment of such account, claim, or demand, until this section is modified or repealed. But this section shall not be construed to prohibit the payment of claims founded upon contracts made by any of the Departments, where such claims were assigned or contracted to be assigned prior to the first day of April, eighteen hundred and sixty-one, to the creditors of such contractors, loyal citizens of loyal States, in payment of debts incurred prior to the first day of March, eighteen hundred and sixty-one.[2]

Claims for collecting, etc., volunteers to be presented prior to June 30, 1874.

238. No claims against the United States, for collecting, drilling, or organizing volunteers for the war of the rebellion, shall be audited or paid unless presented before the thirtieth day of June, eighteen hundred and seventy-four. No claims for horses lost prior to the first day of January, eighteen hundred and seventy-two, shall be audited or paid unless presented before the thirtieth day of June, eighteen hundred and seventy-four.

---

[1] A retired officer of the Army can not act as an attorney for claimants in suits brought against the United States in the Court of Claims. Tyler *v.* U. S., 18 Ct. Cls., 25; In re Winthrop 31, ibid. 35; but see People *v.* Duane, 121 N. Y. Rep., 373.

[2] By the act of March 3, 1877, chapter 105, volume 19, page 362, provision was made for the payment of the amounts due to mail contractors for mail service performed in the States recently in rebellion, and before said States respectively engaged in war against the United States; and the provisions of this section of the Revised Statutes were declared to be not applicable to the payments therein authorized.

Mar. 3, 1873, c. 226, s. 1, v. 17, p. 500.
Sec. 3489, R.S.

Penalty for making false claims against United States.
Mar. 2, 1863, c. 67, s. 3, v. 12, p. 698.
Sec. 3490, R.S.

239. Any person not in the military or naval forces of the United States, or in the militia called into or actually employed in the service of the United States, who shall do or commit any of the acts prohibited by any of the provisions of section fifty-four hundred and thirty-eight, Title "CRIMES," shall forfeit and pay to the United States the sum of two thousand dollars, and, in addition, double the amount of damages which the United States may have sustained by reason of the doing or committing such act, together with the costs of suit; and such forfeiture and damages shall be sued for in the same suit.

Suits for recovery of same.
Mar. 2, 1863, c. 67, s. 4, v. 12, p. 698.
Sec. 3491, R.S.

240. The several district courts of the United States, the supreme court of the District of Columbia, the several district courts of the Territories of the United States, within whose jurisdictional limits the person doing or committing such act shall be found, shall, wheresoever such act may have been done or committed, have full power and jurisdiction to hear, try, and determine such suit. Such suit may be brought and carried on by any person, as well for himself as for the United States; the same shall be at the sole cost and charge of such person, and shall be in the name of the United States, but shall not be withdrawn or discontinued without the consent, in writing, of the judge of the court and the district attorney, first filed in the case, setting forth their reasons for such consent.

Duty of district attorney as to such cases.
Mar. 2, 1863, c. 67, s. 5, v. 12, p. 698.
Sec. 3492, R.S.

241. It shall be the duty of the several district attorneys of the United States for the respective districts, for the District of Columbia, and for the several Territories, to be diligent in inquiring into any violation of the provisions of section thirty-four hundred and ninety by persons liable to such suit, and found within their respective districts or Territories, and to cause them to be proceeded against in due form of law for the recovery of such forfeiture and damages. And such person may be arrested and held to bail in such sum as the district judge may order, not exceeding the sum of two thousand dollars, and twice the amount of the damages sworn to in the affidavit of the person bringing the suit.

Rights of persons bringing such suits.

242. The person bringing said suit and prosecuting it to final judgment shall be entitled to receive one-half the

Mar. 2, 1863, c. 67, s. 6, v. 12, p. 698.
Sec. 3493, R. S.

amount of such forfeiture, as well as one-half the amount of the damages he shall recover and collect; and the other half thereof shall belong to and be paid over to the United States; and such person shall be entitled to receive to his own use all costs the court may award against the defendant, to be allowed and taxed according to any provision of law or rule of court in force, or that shall be in force in suits between private parties in said court: *Provided*, That such person shall be liable for all costs incurred by himself in the case, and shall have no claim therefor on the United States.

Limitation of suit.
Sec. 7, *ibid.*
Sec. 3494, R. S.

243. Every such suit shall be commenced within six years from the commission of the act, and not afterward.

Rules respecting attorneys, etc., to be prescribed by the Secretary of the Treasury.
July 7, 1884, v. 23, p. 258.

244. The Secretary of the Treasury may prescribe rules and regulations governing the recognition of agents, attorneys, or other persons representing claimants before his Department, and may require of such persons, agents and attorneys, before being recognized as representatives of claimants, that they shall show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their cases. And such Secretary may after due notice and opportunity for hearing suspend, and disbar from further practice before his Department any such person, agent, or attorney shown to be incompetent, disreputable, or who refuses to comply with the said rules and regulations, or who shall with intent to defraud, in any manner willfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant, by work, circular, letter, or by advertisement. *Act of July 7, 1884 (23 Stat. L., 258).*

DEBTS DUE BY OR TO THE UNITED STATES.

Par.
245. Priority of debts due the United States established.
246. Liability of executors, etc.
247. Priority of sureties.

Priority of debts due the United States established.
Mar. 3, 1797, c. 20, s. 5, v. 1, p. 515; Mar. 2, 1799, c. 22, s. 65, v. 1, p. 676.
Sec. 3466, R. S.

245. Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority hereby established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed.[1]

Liability of executors, etc. Mar. 2, 1799, c. 22, s. 65, v. 1, p. 676. Field *v.* U. S., 9 Pet., 182; Brent *v.* Bank of Washington, 10 Pet., 596. Sec. 3467, R. S.

246. Every executor, administrator, or assignee, or other person, who pays any debt due by the person or estate from whom or for which he acts, before he satisfies and pays the debts due to the United States from such person or estate, shall become answerable in his own person and estate for the debts so due to the United States, or for so much thereof as may remain due and unpaid. (*See sec. 5101, R. S.*)

Priority of sureties. Mar. 2, 1799, c. 22, s. 65, v. 1, p. 676. Sec. 3468, R. S.

247. Whenever the principal in any bond given to the United States is insolvent, or whenever, such principal being deceased, his estate and effects which come to the hands of his executor, administrator, or assignee, are insufficient for the payment of his debts, and, in either of such cases, any surety on the bond, or the executor, administrator, or assignee of such surety pays to the United States the money due upon such bond, such surety, his executor, administrator, or assignee, shall have the like priority for the recovery and receipt of the moneys out of the estate and effects of such insolvent or deceased principal as is secured to the United States; and may bring and maintain a suit upon the bond, in law or equity, in his own name, for the recovery of all moneys paid thereon.[2]

DISCHARGE OF POOR DEBTORS.

Par.
248. Discharge by Secretary of Treasury.
Par.
249. Discharge by President.

Discharge of poor debtor by Secretary of the Treasury. June 6, 1798, c. 49, ss. 1, 3, v. 1, pp. 561, 562. Sec. 3471, R. S.

248. Any person imprisoned upon execution issuing from any court of the United States, for a debt due to the United States, which he is unable to pay, may, at any time after commitment, make application in writing, to the Secretary of the Treasury, stating the circumstances of his case, and his inability to discharge the debt; and thereupon the Secretary may make, or require to be made, an examination and inquiry into the circumstances of the debtor, by the oath of the debtor, which the Secretary, or any other person by him specially appointed, is authorized to administer, or otherwise, as the Secretary shall deem necessary and expedient, to ascertain the truth; and upon proof made to his satisfaction, that the debtor is unable to pay the debt for which he is imprisoned, and that he has not concealed or made any conveyance of his estate, in trust, for himself, or with an intent to defraud the United States, or to deprive them of their legal priority, the Secretary is authorized to receive from such debtor any deed, assignment, or conveyance of his real or personal estate, or any collateral security, to the use of the United States. Upon a compliance by the debtor with such terms and conditions as the Secretary may judge reasonable and proper, the Secretary must issue his order, under his hand, to the keeper of the prison, directing him to discharge the debtor from his imprisonment under such execution. The debtor shall not be liable to be imprisoned again for the debt; but the judgment shall remain in force, and may be satisfied out of any estate which may then, or at any time afterward, belong to the debtor. The benefit of this section shall not be extended to any person imprisoned for any fine, forfeiture, or penalty, incurred by a breach of any law of the United States, or for moneys had and received by any officer, agent, or other person, for their use; nor shall its provisions extend to any claim arising under the postal laws.[1]

---

[1] U. S. *v.* Fisher, 2 Cr., 358; U. S. *v.* Hooe, 3 Cr., 73; Harrison *v.* Slerry, 5 Cr., 289; Prince *v.* Bartlett, 8 Cr., 431; U. S. *v.* Bryan, 9 Cr., 374; Thelusson *v.* Smith, 2 Wh., 396; U. S. *v.* Howland, 4 Wh., 108; Conard *v.* Insurance Company, 1 Pet., 386; Hunter *v.* U. S., 5 Pet., 173; U. S. *v.* State Bank, 6 Pet., 29; U. S. *v.* Hack, 8 Pet., 271; Brent *v.* Bank of Washington, 10 Pet., 596; Beaston *v.* Farmers' Bank, 12 Pet., 102; U. S. *v.* Herron, 20 Wall., 251; Bayne et al., Trustees, *v.* U. S., 93 U. S., 642.

[2] The priority given in this section to sureties does not apply to sureties on a recognizance in a criminal case. U. S. *v.* Rydor, 110 U. S., 729; U. S. *v.* Fisher, 2 Cr., 358; U. S. *v.* Hooe, 3 Cr., 73; Prince *v.* Bartlett, 8 Cr., 431; U. S. *v.* Bryan, 9 Cr., 374; Thelusson *v.* Smith, 2 Wh., 396; U. S. *v.* Howland, 4 Wh., 108; Conard *v.* Insurance Company, 1 Pet., 439; Hunter *v.* U. S., 5 Pet., 173; Child *v.* Shoemaker, 1 Wash., 494; U. S. *v.* King, Wall. C. C., 12; Johns *v.* Brodhag, 1 Cr. C. C., 235.

Discharge by the President.
Mar. 3, 1817, c. 114, v. 3, p. 399.
Sec. 3472, R. S.

249. Whenever any person is imprisoned upon execution for a debt due to the United States, which he is unable to pay, and his case is such as does not authorize his discharge by the Secretary of the Treasury, under the preceding section, he may make application to the President, who, upon proof made to his satisfaction that the debtor is unable to pay the debt, and upon a compliance by the debtor with such terms and conditions as the President shall deem proper, may order the discharge of such debtor from his imprisonment. The debtor shall not be liable to be imprisoned again for the same debt; but the judgment shall remain in force, and may be satisfied out of any estate which may then, or at any time afterward, belong to the debtor.[2]

---

[1] The discharge of a debtor in accordance with the provisions of this section does not operate to discharge his sureties from liability. 1 Paine, 525. See also U. S. *v.* Stansbury, 1 Pet., 573; U. S. *v.* Ringgold, 5 Pet., 150; Hunter *v.* U. S., 5 Pet., 173; U. S. *v.* Sturges, 1 Paine, 525.

[2] See U. S. *v.* Ringgold, 8 Pet., 150.

SUITS TO RECOVER BALANCES DUE THE UNITED STATES.

250. Whenever any person accountable for public money neglects or refuses to pay into the Treasury the sum or balance reported to be due to the United States upon the adjustment of his account, the [Auditors under the direction of the] Comptroller of the Treasury shall institute suit for the recovery of the same, adding to the sum stated to be due on such account the commissions of the delinquent, which shall be forfeited in every instance where suit is commenced and judgment obtained thereon, and an interest of six per centum from the time of receiving the money until it shall be repaid into the Treasury.[1] *Section 4, act of July 31, 1894 (28 Stat. L., 206).*

Suits to recover money from delinquent officers.
Mar. 3, 1797, c. 20, s. 1, v. 1, p. 512.
U. S. *v.* Gaussen, 19 Wall., 198.
Sec. 3624, R. S.

DISTRESS WARRANTS.

Par.
251. Distress warrant.
252. Contents of warrant.
253. Execution against officer.
254. Same against surety.
255. Levy to be a lien.
256. Sale of lands.
257. Conveyance of lands.
Par.
258. Disposal of surplus.
259. Penalty for failure to account.
260. Extent of application of warrant.
261. Postponement, when allowed.
262. Injunction to stay warrant.
263. Procedure on warrant.
264. Rights of United States reserved.

251. Whenever any collector of the revenue, receiver of public money, or other officer, who has received the public money before it is paid into the Treasury of the United States, fails to render his account or pay over the same in the manner or within the time required by law, it shall be the duty of the proper Auditor to cause to be stated the account of such officer, exhibiting truly the amount due to the United States, and to certify the same to the Solicitor of the Treasury, who shall issue a warrant of distress against the delinquent officer and his sureties directed to the marshal of the district in which such officer and his sureties reside. Where the officer and his sureties reside in different districts, or where they or either of them reside in a district other than that in which the estate of either may be, which it is intended to take and sell, then such warrant shall be directed to the marshals of such districts, respectively.

Distress warrant.
May 15, 1820, c. 107, s. 2, v. 3, p. 592; May 29, 1830, c. 153, s. 1, v. 4, p. 414; Feb. 27, 1877, s. 19, p. 249; July 31, 1894, v. 28, p. 206.
Sec. 3625, R. S.

252. The warrant of distress shall specify the amount with which such delinquent is chargeable and the sums, if any, which have been paid.

Contents of warrant.
Sec. 3626, R. S.

---

[1] See also the titles "*The Comptroller of the Treasury*" and "*The Auditors of the Treasury*" in the chapter entitled THE TREASURY DEPARTMENT, paragraphs 134–165, supra. See also section 4, act of July 31, 1894 (28 Stat. L., 206), and U. S. *v.* Verdier, 164 U. S., 213, 219.

Execution against officer.
May 15, 1820, c. 107, s. 2, v. 3, p. 593.
Sec. 3627, R. S.

253. The marshal authorized to execute any warrant of distress shall, by himself or by his deputy, proceed to levy and collect the sum remaining due, by distress and sale of the goods and chattels of such delinquent officer, having given ten days' previous notice of such intended sale, by affixing an advertisement of the articles to be sold at two or more public places in the town and county where the goods or chattels were taken, or in the town or county where the owner of such goods or chattels may reside. If the goods and chattels be not sufficient to satisfy the warrant, the same may be levied upon the person of such officer, who may be committed to prison, there to remain until discharged by due course of law.

Execution against surety.
May 15, 1820, c. 107, s. 2, v. 3, p. 593.
Sec. 3628, R. S.

254. If the delinquent officer absconds, or if goods and chattels belonging to him can not be found sufficient to satisfy the warrant, the marshal or his deputy shall proceed, notwithstanding the commitment of the delinquent officer, to levy and collect the sum which remains due by such delinquent, by the distress and sale of the goods and chattels of his sureties; having given ten days' previous notice of such intended sale, by affixing an advertisement of the articles to be sold at two or more public places in the town or county where the goods or chattels were taken, or in the town or county where the owner resides.

Levy to be a lien.
May 15, 1820, c. 107, s. 2, v. 3, p. 593.
Sec. 3629, R. S.

255. The amount due by any delinquent officer is declared to be a lien upon the lands, tenements, and hereditaments of such officer and his sureties, from the date of a levy in pursuance of the warrant of distress issued against him or them, and a record thereof made in the office of the clerk of the district court of the proper district, until the same is discharged according to law.

Sale of lands.
May 15, 1820, c. 107, s. 2, v. 3, p. 593.
Sec. 3630, R. S.

256. For want of goods and chattels of a delinquent officer or his sureties, sufficient to satisfy any warrant of distress issued pursuant to the foregoing provisions, the lands, tenements, and hereditaments of such officer and his sureties, or so much thereof as may be recessary for that purpose, after being advertised for at least three weeks in not less than three public places in the county or district where such real estate is situate, before the time of sale, shall be sold by the marshal of such district or his deputy.

Conveyance of lands.
Ibid.
Sec. 3631, R. S.

257. For all lands, tenements, or hereditaments sold in pursuance of the preceding section, the conveyance of the marshal or his deputy, executed in due form of law, shall give a valid title against all persons claiming under such delinquent officer or his sureties.

258. All moneys which may remain of the proceeds of sales, after satisfying the warrant of distress, and paying the reasonable costs and charges of the sale, shall be returned to such delinquent officer or surety, as the case may be.

Disposal of surplus.
Ibid.
Sec. 3632, R. S.

259. Whenever any officer employed in the civil, military, or naval service of the Government, to disburse the public money appropriated for those branches of the public service, respectively, fails to render his accounts, or to pay over, in the manner and in the times required by law, or by the regulations of the Department to which he is accountable, any sum of money remaining in his hands, it shall be the duty of the proper Auditor, as the case may be, who shall be charged with the revision of the accounts of such officer, to cause to be stated and certified the account of such delinquent officer to the Solicitor of the Treasury, who is hereby authorized and required immediately to proceed against such delinquent officer, in the manner directed in the six preceding sections.

Penalty for failure of disbursing officer to account.
May 15, 1820, c. 107, s. 3, v. 3, p. 594; May 29, 1830, c. 153, s. 1, v. 4, p. 414; July 31, 1894; s. 6, v. 28, p. 206.
Sec. 3633, R. S.

260. All the provisions relating to the issuing of a warrant of distress against a delinquent officer shall extend to every officer of the Government charged with the disbursement of the public money, and to their sureties, in the same manner and to the same extent as if they were herein described and enumerated.

Extent of application of distress warrants.
May 15, 1820, c. 107, s. 3, v. 3, p. 594.
Sec. 3634, R.S.

261. With the approval of the Secretary of the Treasury, the institution of proceedings by a warrant of distress may be postponed, for a reasonable time, in cases where, in his opinion, the public interest will sustain no injury by such postponement.

Postponement of proceedings for nonaccounting, when allowed.
May 15, 1820, c. 107, s. 3, v. 3, p. 594.
Sec. 3635, R.S.

262. Any person who considers himself aggrieved by any warrant of distress issued under the foregoing provisions may prefer a bill of complaint to any district judge of the United States, setting forth therein the nature and extent of the injury of which he complains; and thereupon the judge may grant an injunction to stay proceedings on such warrant altogether, or for so much thereof as the nature of the case requires. But no injunction shall issue till the party applying for it gives bond, with sufficient security, in a sum to be prescribed by the judge, for the performance of such judgment as may be awarded against him; nor shall the issuing of such injunction in any manner impair the lien produced by the issuing of the warrant. And the same proceedings shall be had on such injunction as in other cases, except that no answer shall be necessary on

Injunction to stay distress warrant.
May 15, 1820, c. 107, ss. 4, 5, v. 3, p. 595.
Sec. 3636, R.S.

the part of the United States, and if, upon dissolving the injunction, it appears to the satisfaction of the judge that the application for the injunction was merely for delay, the judge may add to the lawful interest assessed on all sums found due against the complainant such damages as, with such lawful interest, shall not exceed the rate of ten per centum a year. Such injunction may be granted or dissolved by the district judge either in or out of court.

Proceedings on distress warrant in circuit court.
May 15, 1820, c. 107, ss. 4, 6, v. 3, p. 595; Apr. 10, 1869, c. 22, s. 2, v. 16, p. 44.
Sec. 3637, R. S.

263. When the district judge refuses to grant an injunction to stay proceedings on a distress warrant, as aforesaid, or dissolves such injunction after it is granted, any person who considers himself aggrieved by the decision in the premises may lay before the circuit justice, or circuit judge of the circuit within which such district lies, a copy of the proceeding had before the district judge; and thereupon the circuit justice or circuit judge may grant an injunction, or permit an appeal, as the case may be, if, in his opinion, the equity of the case requires it. The same proceedings, subject to the same conditions, shall be had upon such injunction in the circuit court as are prescribed in the district court.

Rights of United States reserved.
May 15, 1820, c. 107, s. 9, v. 3, p. 596.
Sec. 3638, R. S.

264. Nothing contained in the provisions of this title relating to distress warrants shall be construed to take away or impair any right or remedy which the United States might have, by law, for the recovery of taxes, debts, or demands.

ESTIMATES.[1]

Par.
265. When to be furnished.
266–267. To be submitted through Secretary of the Treasury.
268. Statement of prior appropriations.
Par.
269. Report of persons employed in public buildings.
270. Report of rented buildings.

Estimates, when to be furnished.
Mar. 3, 1875, s. 3, v. 18, p. 370.

265. It shall be the duty of the heads of the several Executive Departments, and of other officers authorized or required to make estimates, to furnish to the Secretary of the Treasury, on or before the first day of October of each year, their annual estimates for the public service, to be included in the Book of Estimates prepared by law under his direction; and the Secretary of the Treasury shall submit, as a part of the appendix to the Book of Estimates, such extracts from the annual reports of the several heads of Departments and Bureaus as relate to estimates for appropriations, and the necessities therefor. *Sec. 3, act of March 3, 1875 (18 Stat. L., 370).*

---

[1] For provisions of law in respect to the preparation and submission of estimates by the several Executive Departments, see the title "*Estimates,*" in the chapter entitled THE EXECUTIVE DEPARTMENTS.

Estimates to be submitted through Secretary of the Treasury. July 7, 1884, s. 2, v. 23, p. 254.

266. Hereafter all estimates of appropriations and estimates of deficiencies in appropriations intended for the consideration and seeking the action of any of the committees of Congress shall be transmitted to Congress through the Secretary of the Treasury, and in no other manner; and the said Secretary shall first cause the same to be properly classified, compiled, indexed, and printed, under the supervision of the chief of the Division of Warrants, Estimates, and Appropriations of his Department. *Sec. 2, act of July 7, 1884 (23 Stat. L., 254).*

The same. Sec. 3669, R. S.

267. All annual estimates for the public service shall be submitted to Congress through the Secretary of the Treasury, and shall be included in the Book of Estimates prepared under his direction.

Statement of prior appropriations. Sec. 3670, R. S.

268. The Secretary of the Treasury shall annex to the annual estimates of the appropriations required for the public service a statement of the appropriations for the service of the year which may have been made by former acts.

Repairs to public buildings, etc. Aug. 30, 1890, v. 26, p. 371.

269. Hereafter the Secretary of the Treasury shall annually report to Congress in the Book of Estimates a statement of the expenditure of the "appropriation for repairs and preservation of public buildings" which shall show the amount expended on each public building and the number of persons employed and paid salaries from such appropriation.[1] *Act of August 30, 1890 (26 Stat. L., 371).*

Report of buildings rented in the District of Columbia. July 16, 1892, v. 27, p. 183.

270. Hereafter it shall be the duty of the Secretary of the Treasury to cause to be prepared and submitted to Congress each year, in the annual Book of Estimates of Appropriations, a statement of the buildings rented in the District of Columbia for the use of the Government, the purposes for which rented, and the annual rental for each.[2] *Act of July 16, 1892 (27 Stat. L., 183).*

---

[1] The act of March 3, 1887 (24 Stat. L., 509), requires the Secretary of the Treasury to report, annually, the number, etc., of persons employed in the care of public buildings outside the District of Columbia.

[2] For the requirements of law in respect to the renting of buildings in the District of Columbia, see paragraphs 93a and 94, *ante.*

APPROPRIATIONS.

Par.
271. Application.
272. Expenditures not to exceed appropriations.
273. Expenditures of commissions and inquiries.
274. Restriction on contingent appropriations.
275. Total amount of appropriations, how determined.

Application of moneys appropriated. Mar. 3, 1809, c. 28, s. 1, v. 2, p. 535; Feb. 12, 1868, c. 8, s. 2, v. 15, p. 36. **Sec. 3678, R.S.**

271. All sums appropriated for the various branches of expenditure in the public service shall be applied solely to the objects for which they are respectively made, and for no others.[1]

No expenditures beyond appropriations.

272. No Department of the Government shall expend, in any one fiscal year, any sum in excess of appropriations made by Congress for that fiscal year, or involve the Government in any contract for the future payment of money in excess of such appropriations.[1]

---

[1] An appropriation by Congress of a given sum of money for a named purpose is not the designation of a specific fund for that purpose, but simply a legal authority to apply so much of any money in the Treasury to the indicated object. Every appropriation for the payment of a particular demand, or a class of demands, necessarily involves and includes the recognition by Congress of the legality and justice of each demand and is equivalent to an express mandate to the Treasury officers to pay it. This recognition is not affected by any previous adverse action of Congress, for the last expression by that body supersedes all such previous action. Hukill *v.* U. S., 16 Ct. Cls., 562, 585. When an appropriation has been made by Congress for a general purpose, contemplating a multitude of acts to be done by the Department, its agency is general within those limits. Leavitt *v.* U. S., 34 F. R., 623. When an alleged liability of the Government rests wholly upon an appropriation, they must stand or fall together, so that when the latter is exhausted the former comes to an end. Shipman *v.* U. S., 18 Ct. Cls., 138.

The disposition of public money is in the discretion of Congress, and its reasons for passing an act of appropriation and the consideration thereof can not be inquired into nor its will thwarted by any executive officers or by the courts. Mumford *v.* U. S., 31 Ct. Cls., 210, 215; Jordan *v.* U. S., 19; Ibid., 108; 113, U. S., 418. In view of the requirements of this section a disbursing officer is not authorized to use public moneys advanced to him from one appropriation in the payment of liabilities arising under another appropriation. IV Comp. Dec., 569.

Administrative discretion in expenditures.—Ordinarily, where discretionary power is lodged in a judicial officer, his decision is not reviewable save by the court of which he is a member, and then only when there has been a clear abuse of the discretion committed to him. Far more cogent reasons exist why this rule should be applied to administrative officers, who are empowered to use their discretion as to the manner in which public moneys shall be expended, for great embarrassment and confusion might result if officers in one Executive Department could sit in judgment upon the decisions of the officers of another Executive Department in cases involving the exercise of judgment and discretion. III Comp. Dec., 21. Wherever the exercise of discretion by the War Department in disbursing moneys appropriated for the support of the Army is permitted by a statute, the manner in which such discretion has been exercised is a matter of administration with which the accounting officers have no concern. It is the province of the military authorities to determine the needs of a given military depot or post and the quantity of a specified article to be allotted to said depot or post, while it is the province of the accounting officers to determine whether or not Congress has made an appropriation covering a specific expenditure, or whether or not such expenditure was made in conformity with law. Ibid., 21. The degree of wisdom displayed in the exercise of the discretion given an officer of the Army, under the authority of the Secretary of War, is not a subject for review by the accounting officers. If the officer is responsible for his action in the premises to anyone, it is to the source from which he derived his authority. Ibid., 22.

The evidence required by the War Department from the disbursing officers and agents of the Army for administrative purposes is a matter peculiarly within the jurisdiction of the Secretary of War. Ibid., 497.

July 12, 1870, c. 251, s. 7, v. 16, p. 251.
Sec. 3679, R.S.

273. No accounting or disbursing officer of the Government shall allow or pay any account or charge whatever, growing out of, or in any way connected with, any commission or inquiry, except courts-martial or courts of inquiry in the military or naval service of the United States, until special appropriations shall have been made by law to pay such accounts and charges. This section, however, shall not extend to the contingent fund connected with the foreign intercourse of the Government, placed at the disposal of the President.

Expenses of commissions and inquiries.
Aug. 26, 1842, c. 202, s. 25, v. 5, p. 533.
Sec. 3681, R.S.

274. No moneys appropriated for contingent, incidental, or miscellaneous purposes shall be expended or paid for official or clerical compensation.[2]

Restrictions on contingent, etc., appropriations.
July 12, 1870, c. 251, s. 3, v. 16, p. 250.
Sec. 3682, R.S.

275. Hereafter the total amount appropriated in the various paragraphs of an appropriation act shall be deter-

Total amount of appropriation.
May 28, 1896, v. 29, p. 140.

---

[1] The legal liability of the Government does not generally depend upon appropriations. The constitutional provision, in Article I, section 9, that "no money shall be drawn from the Treasury but in consequence of appropriations made by law," is a mere limitation and restriction upon the executive officers of the Treasury Department, and does not prevent Congress, the law-making power, from involving the Government in contracts to pay money to any extent. When such contracts are made, the parties who acquire rights to compensation thereunder must wait until an appropriation is made before they can receive their money, but the right on their part and the obligation on the part of the United States remain unchanged. Failing to obtain direct appropriations for their benefit, public creditors may sue in this court and thus obtain payment out of any money appropriated for the payment and satisfaction of private claims. Mitchell *v.* U. S., 18 Ct. Cls., 281, 286. The excepting clause in section 3732, Revised Statutes (a) in relation to contracts for and purchases of clothing, subsistence, forage, fuel, quarters, etc., operates to withdraw such contracts and purchases from the prohibition contained in this paragraph in relation to expenditures in excess of the appropriations for a particular fiscal year, and such purchases may be made, provided the necessities of the current fiscal year be not exceeded.

A deficiency appropriation is one made to pay a liability legally created, for the payment of which an appropriation previously made is insufficient; it supplements the original appropriation, partakes of its nature, and is subject to the same limitations which attach by law to the use of the original appropriation. IV Comp. Dec., 61.

[2] The Revised Statutes (section 3682) forbid money appropriated for contingent, incidental, or miscellaneous purposes being used for official or clerical compensation. The adjectives "contingent," "incidental," and "miscellaneous" have a technical and well-understood meaning; and, where a specific appropriation is made for specific objects, such as clerks, messengers, light, fuel, no disbursement can be made therefor from the appropriation for "miscellaneous expenses." 22 Ct. Cls., 269. See, also, for other statutory provisions respecting the disbursement of contingent funds, paragraphs 42 and 54 to 60 *ante.*

The words "contingent expenses" as employed in acts making appropriations, means such incidental, casual, and unforeseen expenses as are necessary and appropriate to the execution of duties required by law in connection with the object for which the appropriation was made. IV Comp. Dec., 287. There is no discretion conferred upon the heads of departments to use such appropriations for other purposes. Ibid.

---

a See the chapter entitled CONTRACTS AND PURCHASES.

mined by the correct footing up of the specific sums or rates appropriated in each paragraph contained therein unless otherwise expressly provided. *Act of May 28, 1896 (29 Stat. L., 140, 148).*

PERMANENT ANNUAL APPROPRIATIONS.[1]

Permanent appropriations. Sec. 3689, R.S.

276. There are appropriated, out of any moneys in the Treasury not otherwise appropriated, for the purposes hereinafter specified, such sums as may be necessary for the same respectively; and such appropriations shall be deemed permanent annual appropriations.

UNDER THE WAR DEPARTMENT.

Bounty to soldiers:

July 28, 1866, c. 296, s. 12, v. 14, p. 322; Apr. 22, 1872, c. 114, v. 17, p. 55.

For payment of bounty to soldiers, or their widows or legal heirs, under the twelfth, thirteenth, fourteenth, fifteenth, and sixteenth sections of "An act making appropriations for sundry civil expenses of the Government for the year ending June thirty, eighteen hundred and sixty-seven, and for other purposes."[2]

Apr. 12, 1871, c. 12, ss. 1, 2, v. 17, pp. 641, 642.

Payment to certain military organizations in Kansas:

To pay to the members of the military organizations known as the Westport Police Guards, Hickman's Mills Company, and Companies A, B, C, D, and E of the Kansas City Station Guards, under private act of April twelve, eighteen hundred and seventy-one, chapter twelve, the pay and allowances of volunteers in the service of the United States.

Traveling expenses of California and Nevada volunteers:

Mar. 2, 1867, c. 170, s. 7, v. 14, p. 487.

To pay for the traveling expenses of such California and Nevada volunteers as were discharged in New Mexico, Arizona, or Utah, and at points distant from the place or places of enlistment, such proportionate sum, according to the distance traveled, as has been paid to the troops of other States similarly situated.

---

[1] Permanent appropriations are those made for an unlimited period. Indefinite appropriations are those in which no amount is named. XIII Opin. Att. Gen., 289. A "permanent specific appropriation" is one which requires the money payable by virtue of it to be applied to an object specifically pointed out by law, and which may be so applied at any time in the future, and not merely for the service of the current fiscal year. It exists when the act of Congress which made it points out the purpose to which it applies, and shows that it was intended to be used in the future, without limit as to time. If the object to which it is to be applied has no reference to, or connection with, the service of any particular year, the appropriation may be considered as permanent, where such intention is apparent in the act making it. If it be for the discharge of an existing obligation having no connection with the service of the current year, and not in part discharge of a continuous service, it may reasonably be supposed that Congress intended the liability to be paid without reference to time. 2 Lawrence, Compt. Dec., 2d ed., 246; III Compt. Dec., 623, 625.

[2] By the act of March 3, 1875 (18 Stat. L., 343), the clause of the above section making a permanent appropriation for the National Home for Disabled Volunteer Soldiers was repealed.

Allowance for reduction of wages under eight-hour law:

May 18, 1872, c. 172, s. 2, v. 17, p. 134.

Of such sum as may be required in the settlement of all accounts for the services of laborers, workmen, and mechanics employed by or on behalf of the Government, between the twenty-fifth day of June, eighteen hundred and sixty-eight, the date of the act constituting eight hours a day's work for all such laborers, workmen, and mechanics, and the nineteenth day of May, eighteen hundred and sixty-nine, the date of the proclamation of the President concerning such pay, to settle and pay for the same without reduction on account of reduction of hours of labor by said act, when it shall be made to appear that such was the sole cause of the reduction of wages. (*See sec. 3738.*)

Annual appropriation for arms and equipments.

Apr. 23, 1808, c. 55, s. 1, v. 2, p. 490; Apr. 29, 1816, c. 135, s. 1, v. 3, p. 320; Mar. 3, 1875, c. 133, s. 3, v. 18, p. 455; Feb. 12, 1887, v. 24, p. 401.

Sec. 1661, R.S.

277. The sum of one million dollars is hereby annually appropriated, to be paid out of any money in the Treasury not otherwise appropriated, for the purpose of providing arms, ordnance stores, quartermaster stores, and camp equipage for issue to the militia.[1] *Act of June 6, 1900* (*31 Stat. L., 662*).

Tolls not to be levied or collected on canals, etc.

Sec. 4, July 5, 1884, v. 23, p. 147.

Payments for actual expenses of operation and repair authorized.

278. No tolls or operating charges whatsoever shall be levied or collected upon any vessel or vessels, dredges, or other passing water craft through any canal or other work for the improvement of navigation belonging to the United States; and for the purpose of preserving and continuing the use and navigation of said canals, rivers, and other public works without interruption, the Secretary of War, upon the application of the chief engineer in charge of said works, is hereby authorized to draw his warrant or requisition from time to time upon the Secretary of the Treasury to pay the actual expenses of operating and keeping said works in repair, which warrants or requisitions shall be paid by the Secretary of the Treasury, out of any money in the Treasury not otherwise appropriated: *Provided, however*, That an itemized statement of said expenses shall accompany the annual report of the Chief of Engineers. *Sec. 4, act of July 5, 1884* (*23 Stat. L., 147*).

---

[1] By the act of April 23, 1808 (2 Stat. L., 490, sec. 1661, R. S.), a permanent appropriation of $200,000 was authorized for arming and equipping the militia. This appropriation was increased to $400,000 by the act of February 12, 1887 (24 Stat. L., 401). By the act of August 18, 1894 (28 Stat. L., 372), it was provided that the appropriation should not lapse as to any unexpended portion in any fiscal year, but that such unexpended portion should constitute a fund to be applied to the purpose contemplated by the statute. By the act of June 6, 1900 (31 Stat. L., 662), the annual appropriation was increased to $1,000,000.

APPLICATION OF BALANCES.

Par.
279. To be covered into the Treasury at the end of fiscal year.
280. Appropriations for public buildings exempt from being covered in.
281, 282. Disposition of balances after two years.

Application of balances of appropriations. July 12, 1870, c. 251, s. 5, v. 16, p. 251. **Sec. 3690, R. S.**

279. All balances of appropriations contained in the annual appropriation bills and made specifically for the service of any fiscal year, and remaining unexpended at the expiration of such fiscal year, shall only be applied to the payment of expenses properly incurred during that year, or to the fulfillment of contracts properly made within that year; and balances not needed for such purposes shall be carried to the surplus fund. This section, however, shall not apply to appropriations known as permanent or indefinite appropriations.[1]

Exemption in respect to public buildings. June 23, 1874, v. 18, p. 275.

280. All moneys heretofore appropriated for the construction of public buildings and now remaining to the credit of the same on the books of the Treasury Department, or which may hereafter be appropriated for such buildings, shall remain available until the completion of the work for which they are, or may be, appropriated. And upon the final completion of said buildings, and the payment of all outstanding liabilities therefor, the balance

---

[1] The use of every fiscal-year appropriation is limited by section 3690 of the Revised Statutes and by its own terms to the payment of expenses properly incurred during the fiscal year for which it is made, or to the fulfillment of contracts properly made within that year; and balances not needed for such purposes must be carried to the surplus fund and covered into the Treasury in conformity with the provisions of section 5 of the act of June 20, 1874. (18 Stat. L., 110); 3 Dig., 2d Compt. Dec., par. 96. The use of any part of an appropriation made for one fiscal year for the payment of any liability incurred during a succeeding fiscal year is prohibited by section 3679 as well as by section 3690 of the Revised Statutes. Ibid., par. 99.

An appropriation is properly chargeable with all the expenses necessary to accomplish the object for which it is made, unless particular items of expense are specifically provided for by some other appropriation. IV Compt. Dec. 24, I ibid., 472, 517; II ibid., 74; III ibid., 623. There is no authority under an act of appropriation, made specifically for the service of a particular fiscal year, to enter into a contract for supplies, etc., for the service of a subsequent fiscal year, and therefore, as to that appropriation, such a contract is not "properly made within that year," within the meaning of section 3690, Revised Statutes. IV ibid., 553. While it is a rule that a specific appropriation excludes the use, for the same objects, of a general appropriation, yet when there are two appropriations both applicable to the same object they are to be treated as cumulative, and either or both can be used in the discretion of the head of the Department. Ibid., 121. See, also, I ibid., 533. The balance of an appropriation which has been treated as not limited to a fiscal year will, upon the accomplishment of the object for which it was made, be covered into the Treasury, in analogy to the practice required by law (*a*) in the case of balances of appropriations for the construction of public buildings. I Compt. Dec., 487.

An appropriation found in an annual appropriation act and made specifically for the service of a certain fiscal year is not available thereafter except in payment of expenses properly incurred, or in the fulfillment of contracts properly made within the year as provided in section 3690 of the Revised Statutes. I Compt. Dec., 170.

---

a Act of June 23, 1874 (18 Stat. L., 275).

or balances remaining shall be immediately covered into the Treasury. *Act of June 23, 1874 (18 Stat. L., 275).*

Disposal of balances after two years.
Sec. 6, *ibid.*
June 20, 1874, c. 328, v. 18, p. 110.
Sec. 3691, R. S.

281. All balances of appropriations which shall have remained on the books of the Treasury, without being drawn against in the settlement of accounts, for two years from the date of the last appropriation made by law, shall be reported by the Secretary of the Treasury to the Auditor of the Treasury, whose duty it is to settle accounts thereunder, and the Auditor shall examine the books of his office, and certify to the Secretary whether such balances will be required in the settlement of any accounts pending in his office; and if it appears that such balances will not be required for this purpose, then the Secretary may include such balances in his surplus-fund warrant, whether the head of the proper Department shall have certified that it may be carried into the general Treasury or not. But no appropriation for the payment of the interest or principal of the public debt, or to which a longer duration is given by law, shall be thus treated.

The same.
June 20, 1874, s. 5, v. 18, p. 85.

282. From and after the first day of July, eighteen hundred and seventy-four, and of each year thereafter, the Secretary of the Treasury shall cause all unexpended balances of appropriations which have remained upon the books of the Treasury for two fiscal years to be carried to the surplus fund and covered into the Treasury: *Provided*, That this provision shall not apply to permanent specific appropriations, appropriations for rivers and harbors, light-houses, fortifications, public buildings, or the pay of the Navy and Marine Corps; but the appropriations named in this proviso shall continue available until otherwise ordered by Congress. *Sec. 5, Act of June 20, 1784 (18 Stat. L., 85).*

THE PUBLIC MONEYS.

THE TREASURY, SUBTREASURIES, AND DEPOSITORIES.

THE TREASURER.

Par.
283. The Treasurer, appointment.
284. Duties.
285. The Treasury of the United States.

Par.
286. Assistant treasurers.
287, 288. Certain mints to be depositories.
289, 290. Designated depositories.

The Treasurer.
Sept. 2, 1789, c. 12, s. 1, v. 1, p. 65; July 23, 1866, c. 208, s. 2, v. 14, p. 206; July 17, 1884, v. 23, p. 169.
Sec. 301, R. S.

283. There shall be in the Department of the Treasury a Treasurer of the United States, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be entitled to a salary of six thousand dollars a year.

Duties of the Treasurer.
Sept. 2, 1789, c. 12, s. 4, v. 1, p. 65.
Sec. 11, act of July 31, 1894, vol. 28, p. 210.
Sec. 305, R. S.

284. The Treasurer shall receive and keep the moneys of the United States, and disburse the same upon warrants drawn by the Secretary of the Treasury, countersigned by the Comptroller, and not otherwise. He shall take receipts for all moneys paid by him, and shall give receipts for all moneys received by him; and all receipts for moneys received by him shall be indorsed upon warrants signed by the Secretary of the Treasury, without which warrant, so signed, no acknowledgment for money received into the public Treasury shall be valid. He shall render his accounts to the [Auditor for the Treasury Department] quarterly, or oftener if required, and shall transmit a copy thereof, when settled, to the Secretary of the Treasury. He shall at all times submit to the Secretary of the Treasury and the Comptroller, or either of them, the inspection of the moneys in his hands.[1]

The Treasury of the United States.
Aug. 6, 1846, c. 90, s. 1. v. 9, p. 59.
Cooke et al. *v.* U. S., 91 U. S., 389.
Sec. 3591, R. S.

285. The rooms provided in the Treasury building at the seat of government for the use of the Treasurer of the United States, his assistants, and clerks, and occupied by them, and the fireproof vaults and safes erected therein for the keeping of the public moneys in the possession and under the immediate control of the Treasurer, and such other apartments as are provided as places of deposit of the public money, shall be the Treasury of the United States.

ASSISTANT TREASURERS.

Appointment, etc., of assistant treasurers.
Aug. 6, 1846, c. 90, s. 5, v. 9, p. 60; Apr. 7, 1868, c. 28, s. 14, v. 14, p. 26; June 15, 1870, c. 12, s. 1, v. 16, p. 152; Feb. 12, 1873, c. 131, s. 65, v. 17, p. 435; Mar. 3, 1873, c. 229, s. 5, v. 17, p. 543.
Sec. 3595, R. S.

286. There shall be assistant treasurers of the United States, appointed from time to time by the President, by and with the advice and consent of the Senate, to serve for the term of four years, as follows:

One at Boston.
One at New York.
One at Philadelphia.
One at Baltimore.
One at New Orleans.
One at Saint Louis.
One at San Francisco.
One at Cincinnati.
One at Chicago.

Certain mints and assay offices to be depositories.
Apr. 21, 1862, c. 59, s. 5, v. 12, p. 383; Mar. 3, 1863, c. 96, s. 5, v. 12, p. 770; Feb. 18, 1869, c. 33, s. 4, v. 15, p. 271; Feb. 12, 1873, c. 131, ss. 65, 66, v. 17, p. 435. **Sec. 3592, R. S.**

287. The mints at Carson City, and at Denver, and the assay office at Boisé City, shall be places of deposit for such public moneys as the Secretary of the Treasury may direct.

---

[1] So much of this section as required the Register of the Treasury to record warrants was repealed by section 11 of the act of July 31, 1894. (28 Stat. L., 209.)

288. The superintendent of the mint at Carson City, and the superintendent of the assay-office at Boisé City, shall be assistant treasurers of the United States, and shall respectively have the custody and care of all public moneys deposited therein, and shall perform all the duties required of them in reference to the receipt, safe-keeping, transfer, and disbursement of all such moneys, as provided by law.

Superintendents of mint at Carson and assay office at Boisé City to be assistant treasurers.

Mar. 3, 1863, c. 96, s. 5, v. 12, p. 770; Apr. 21, 1862, c. 50, s. 5, v. 12, p. 383; Mar. 3, 1871, c. 113, s. 1, v. 16, p. 485; Feb. 18, 1869, c. 33, s. 4, v. 15, p. 271; Feb. 12, 1873, c. 131, ss. 65, 66, v. 17, p. 435. **Sec. 3594 R. S.**

DESIGNATED DEPOSITORIES.

289. All national banking associations, designated for that purpose by the Secretary of the Treasury, shall be depositaries of public money, except receipts from customs, under such regulations as may be prescribed by the Secretary, but receipts derived from duties on imports in Alaska, the Hawaiian Islands, and other islands under the jurisdiction of the United States may be deposited in such depositaries subject to such regulations; and such depositaries may also be employed as financial agents of the Government; and they shall perform all such reasonable duties as depositaries of public moneys and financial agents of the Government as may be required of them. The Secretary of the Treasury shall require the associations thus designated to give satisfactory security, by the deposit of United States bonds and otherwise, for the safe-keeping and prompt payment of public money deposited with them, and for the faithful performance of their duties as financial agents of the Government. And every association so designated as receiver or depositary of the public money shall take and receive at par all of the national currency bills, by whatever association issued, which have been paid into the Government for internal revenue or for loans or stocks. *Act of March 3, 1901 (31 Stat. L., 1448).*

National banks as depositories.

Mar. 3, 1901, v. 31, p. 1448.

Sec. 5153, R. S.

290. In places * * * where there is no treasurer or assistant treasurer, the Secretary of the Treasury may, when he deems it essential to the public interest, specially authorize in writing the deposit of such public money in any public depository, or, in writing, authorize the same to be kept in any other manner, and under such rules and regulations as he may deem most safe and effectual to facilitate the payments to public creditors.

Depositories.

Sec. 3620, R. S.

The Secretary of the Treasury is hereby authorized to designate one or more banks or bankers in the Philippine Islands and in the islands of Cuba and Porto Rico in which public moneys may be deposited: *Provided*, That the banks

The same.

June 6, 1900, v 31, p. 658.

or bankers thus designated shall give satisfactory security for the safe-keeping and prompt payment of the public moneys so deposited by depositing in the Treasury United States bonds to an amount not less than the aggregate sum at any time on deposit with such banks or bankers: *And provided further*, That this act shall apply to Cuba only while occupied by the United States. *Act of June 6, 1900 (31 Stat. L., 658).*

DISBURSING AGENTS.

Par.
291. Collectors to act as disbursing agents.
292. Special disbursing agents.
293. Limit on compensation.
294. Compensation of certain disbursing agents.
295. Bonds of special agents.
295a. Expenses of fiscal agents.

Collectors to act as disbursing agents. June 12, 1858, c. 154, s. 17, v. 11, p. 327. Sec. 3657, R. S.

291. The collectors of customs in the several collection districts are required to act as disbursing agents for the payment of all moneys that are or may hereafter be appropriated for the construction of custom-houses, court-houses, post-offices, and marine hospitals; with such compensation, not exceeding one-quarter of one per centum, as the Secretary of the Treasury may deem equitable and just. (*See sec. 255.*)

Special disbursing agents. July 28, 1866, c. 302, v. 14, p. 341. Sec. 3658, R. S.

292. Where there is no collector at the place of location of any public work specified in the preceding section, the Secretary of the Treasury may appoint a disbursing agent for the payment of all moneys appropriated for the construction of any such public work, with such compensation as he may deem equitable and just.

Limit on extra compensation. Mar. 3, 1869, v. 15, p. 112. Mar. 3, 1875, v. 18, p. 415. Sec. 3654, R. S.

293. No extra compensation exceeding one-eighth of one per centum shall in any case be allowed or paid to any officer, person, or corporation for disbursing moneys appropriated to the construction of any public building.[1]

Compensation of certain disbursing agents. Aug. 7, 1882, v. 22, p. 306.

294. Any disbursing agent who has been or may be appointed to disburse any appropriation for any United States court-house and post-office, or other building or grounds, not located within the city of Washington, shall be entitled to the compensation allowed by law to collectors of customs for such amounts as have been or may be disbursed. *Act of August 7, 1882 (22 Stat. L., 306).*

---

[1] Section 4 of the act of March 3, 1875 (18 Stat. L., 402), contained the requirement that this section "was intended and shall be deemed and held to limit the compensation to be allowed to any disbursing officer who disbursed moneys appropriated for and expended in the construction of any public building to three-eighths of one per centum for said services."

295. Whenever it becomes necessary for the head of any Department or office to employ special agents, other than officers of the Army or Navy, who may be charged with the disbursement of public moneys, such agents shall, before entering upon duty, give bond in such form and with such security as the head of the Department or office employing them may approve. *Sec. 3614, R. S.*

Bonds of special agents.
Aug. 4, 1854, c. 242, s. 14, v. 10, p. 573.
Sec. 3614, R. S.

295a. The officers, respectively, whose duty it is made by this Title to receive, keep, or disburse the public moneys, as the fiscal agents of the Government, may be allowed any necessary additional expenses for clerks, fireproof chests or vaults, or other necessary expenses of safe-keeping, transferring, or disbursing the moneys; but all such expenses of every character shall be first expressly authorized by the Secretary of the Treasury, whose directions upon all the above subjects, by way of regulation and otherwise, so far as authorized by law, shall be strictly followed by all the officers.[1]

Expenses of fiscal agents.
Aug. 6, 1846, c. 90, s. 13, v. 9, p. 62.
Sec. 3653, R. S.

TRANSFERS OF FUNDS BY THE SECRETARY OF THE TREASURY.

Par.
296. Funds subject to transfer.
297. Transfers from depositaries to Treasury.
Par.
298. Public moneys subject to draft of the Treasurer.

296. All public moneys paid into any depository shall be subject to the draft of the Treasurer of the United States, drawn agreeably to appropriations made by law.

Public moneys subject to draft of the Treasurer.
Aug. 6, 1846, c. 90, s. 1, v. 9, p. 59.
Sec. 3593, R. S.

297. The Secretary of the Treasury may, except as provided in the next section, transfer the moneys in the hands of any depositary of public moneys to the Treasury of the United States to the credit of the Treasurer; and he may transfer moneys in the hands of one depositary to any other depositary, as the safety of the public moneys and the convenience of the public service shall seem to him to require.

Transfers of moneys from depositaries to Treasury.
Aug. 6, 1846, c. 90, s. 10, v. 9, p. 61.
Sec. 3640, R. S.

298. All moneys paid into the Treasury of the United States shall be subject to the draft of the Treasurer. And for the purpose of payments on the public account the Treasurer is authorized to draw upon any of the depositaries, as he may think most conducive to the public interest and to the convenience of the public creditors. Each depositary so drawn upon shall make returns to the Treasury and Post-Office Departments of all moneys received

Public moneys in Treasury and depositories subject to draft of Treasurer.
Aug. 6, 1846, c. 90, s. 10, v. 9, p. 61.
Sec. 3644, R.S.

---

[1] An officer charged with the duty of safely keeping and paying over public money is not relieved from liability although it is destroyed by fire while in his possession and without negligence on his part. I Compt. Dec., 191.

and paid by him, at such times and in such forms as shall be directed by the Secretary of the Treasury or the Postmaster-General.

DEPOSIT OF PUBLIC MONEY.

Par.
299–300. Collectors and receivers, etc., to deposit public funds.
301. Duty of disbursing officers.
302. Penalty for failure to deposit funds.
303. Duties of disbursing officers as custodians of public funds.
304. Reports of Treasurer, etc.

Collectors of public moneys to deposit same in Treasury, etc.
Aug. 6, 1846, c. 90, s. 9, v. 9, p. 61; Feb. 12, 1873, c. 131, s. 65, v. 17, p. 435.
Sec. 3615, R.S.

299. All collectors and receivers of public money of every description, within the District of Columbia, shall, as often as they may be directed by the Secretary of the Treasury or the Postmaster-General so to do, pay over to the Treasurer of the United States, at the Treasury, all public moneys collected by them or in their hands. All such collectors and receivers of public moneys within the cities of New York, Boston, Philadelphia, New Orleans, San Francisco, Baltimore, Charleston, and St. Louis shall, upon the same direction, pay over to the assistant treasurers in their respective cities, at their offices, respectively, all the public moneys collected by them, or in their hands; to be safely kept by the respective depositaries, until otherwise disposed of according to law. It shall be the duty of the Secretary and Postmaster-General, respectively, to direct such payments by the collectors and receivers at all the said places, at least as often as once in each week, and as much oftener as they may think proper.

How marshals, district attorneys, and other officers may deposit money in Treasury.
Aug. 6, 1846, c. 90, s. 15, v. 9, p. 62; July 8, 1870, c. 230, s. 111, v. 16, p. 216.
Sec. 3616, R.S.

300. All marshals, district attorneys, and other persons than those mentioned in the preceding section, having public money to pay to the United States, may pay the same to any depositary constituted by or in pursuance of law, which may be designated by the Secretary of the Treasury.

Duty of disbursing officers as to public money.
June 14, 1866, c. 122, s. 1, v. 14, p. 64; Feb. 27, 1877, c. 69, v. 19, p. 249.
Sec. 3620, R.S.

301. It shall be the duty of every disbursing officer having any public money intrusted to him for disbursement to deposit the same with the Treasurer or some one of the assistant treasurers of the United States, and to draw for the same only as it may be required for payments to be made by him in pursuance of law [and draw for the same only in favor of the persons to whom payment is made]; and all transfers from the Treasurer of the United States to a disbursing officer shall be by draft or warrant on the Treasury or an assistant treasurer of the United States. In places, however, where there is no treasurer or assistant treasurer, the Secretary of the Treasury may, when he deems it essential to the public interest, specially authorize in writing the deposit of such public money in any other public depository, or, in writing, authorize the same to be kept in any other manner, and under such rules and regulations as he may deem most safe and effectual to facilitate the payments to public creditors. (*See sec. 5488, R. S.*)

Penalty for failure to deposit.
Mar. 3, 1858, c. 114, s. 3, v. 11, p. 249.
Sec. 5, May 28, 1896, v. 29, p. 179.
Sec. 3621, R.S.

302. Every person who shall have moneys of the United States in his hands or possession, and disbursing officers having moneys in their possession not required for current expenditure, shall pay the same to the Treasurer, an assistant treasurer, or some public depositary of the United States, without delay, and in all cases within thirty days of their receipt. And the Treasurer, the assistant treasurer, or the public depositary shall issue duplicate receipts for the moneys so paid, transmitting forthwith the original to the Secretary of the Treasury, and delivering the duplicate to the depositor: *Provided*, That postal revenue and debts due to the Post-Office Department shall be paid into the Treasury in the manner now required by law.

Duties of disbursing officers as custodians of public moneys.
Aug. 6, 1846, c. 90, s. 6, v. 9, p. 60; Mar. 3, 1857, c. 114, s. 2, v. 11, p. 249; July 3, 1852, c. 54, s. 7, v. 10, p. 12; Mar. 3, 1863, c. 96, s. 5, v. 12, p. 770; July 4, 1864, c. 24, s. 5, v. 13, p. 383; Apr. 21, 1862, c. 59, s. 5, v. 12, p. 382; Feb. 18, 1869, c. 33, s. 4, v. 15, p. 271.
Sec. 3639, R. S.

303. The Treasurer of the United States, all assistant treasurers, and those performing the duties of assistant treasurer, all collectors of the customs, all surveyors of the customs, acting also as collectors, all receivers of public moneys at the several land offices, all postmasters, and all public officers of whatsoever character, are required to keep safely, without loaning, using, depositing in banks, or exchanging for other funds than as specially allowed by law, all the public money collected by them, or otherwise at any time placed in their possession and custody, till the same is ordered, by the proper Department or officer of the Government, to be transferred or paid out; and when such orders for transfer or payment are received, faithfully and promptly to make the same as directed, and to do and perform all other duties as fiscal agents of the Government which may be imposed by any law, or by any regulation of the Treasury Department made in conformity to law. The President is authorized, if in his opinion the interest of the United States require the same, to regulate and increase the sums for which bonds are, or may be, required by law, of all district attorneys, collectors of customs, naval officers, and surveyors of customs, navy agents, receivers and registers of public lands, paymasters in the Army, Commissary-General, and by all other officers employed in the disbursement of the public moneys, under the direction of the War or Navy Departments. (*See secs. 5489–5497, R. S.*)

Reports of Treasurer, assistant treasurers, etc., and disbursing officers.
May 2, 1866, c. 70, s. 6, v. 14, p. 42.
Sec. 310, R. S.

304. The Treasurer, each assistant treasurer, and each designated depositary of the United States, and the cashier of each of the national banks designated as such depositaries, shall, at the close of business on every thirtieth day of June, report to the Secretary of the Treasury the condition of every account standing, as in the preceding section specified, on the books of their respective offices, stating the name of each depositor, with his official designation, the total amount remaining on deposit to his credit, and the dates, respectively, of the last credit and the last debit made to each account. And each disbursing officer shall make a like return of all checks issued by him, and which may then have been outstanding and unpaid for three years and more, stating fully in such report the name of the payee, for what purpose each check was given, the office on which drawn, the number of the voucher received therefor, the date, number, and amount for which it was drawn, and, when known, the residence of the payee.[1]

TENDER.

Par.
305,306. Duties and debts to United States, in what money to be paid.
Par.
307. National-bank notes, when receivable.
308. Treasury notes for debts of United States.

Duties and other debts to United States, in what to be paid.
Aug. 6, 1846, c. 90, s. 18, v. 9. p. 64.
Dec. 23, 1857, c. 1, s. 6, v. 11, p. 258.
Sec. 3473, R. S.

305. All duties on imports shall be paid in gold and silver coin only, [coin certificates] or in demand Treasury notes, issued under the authority of the acts of July seventeen, eighteen hundred and sixty-one, chapter five, and February twelve, eighteen hundred and sixty-two, chapter twenty; and all taxes and all other debts and demands than duties on imports, accruing or becoming due to the United States, shall be paid in gold and silver coin, Treasury notes, United States notes, or notes of national banks.

What coin receivable in payment of dues to the United States.
Aug. 31, 1852, c. 108, s. 2, v. 10, pp. 97, 98; Feb. 21, 1857, c. 56, ss. 2, 3, v. 11, p. 163.
Sec. 3474, R. S.

306. No gold or silver other than coin of standard fineness of the United States, shall be receivable in payment of dues to the United States, except as provided in section twenty-three hundred and sixty-six, Title "PUBLIC LANDS," and in section thirty-five hundred and sixty-seven, Title "COINAGE, WEIGHTS, AND MEASURES."

---

[1] For statutes regulating the transfer, safe-keeping, deposit, and disbursement of public moneys, see the title "*Disbursing officers*" in the chapter entitled "THE STAFF DEPARTMENTS."

307. The notes of national banks shall be received at par for all debts and demands owing by the United States to any person within the United States, except interest on the public debt, or in redemption of the national currency. (*See sec. 5182, R. S.*)

National-bank notes, when receivable.
June 3, 1864, c. 106, s. 23, v. 13, p. 106.
Sec. 3475, R. S.

308. Treasury notes bearing interest may be paid to any creditor of the United States at their face value, excluding interest, or to any creditor willing to receive them at par, including interest.

Treasury notes payable for debts of United States.
Mar. 3, 1863, c. 73, s. 2, v. 12, p. 710; June 30, 1864, c. 172, s. 2, v. 13, p. 218.
Sec. 3476, R. S.

OUTSTANDING CHECKS.

Par.
309. Checks outstanding over three years to be covered into the Treasury.
310. Vouchers for drafts remaining unpaid.
311. Payment of outstanding checks.
312. Accounts of disbursing officers remaining unchanged for three years.

309. At the termination of each fiscal year all amounts of moneys that are represented by certificates, drafts, or checks, issued by the Treasurer, or by any disbursing officer of any Department of the Government, upon the Treasurer or any assistant treasurer, or designated depositary of the United States, or upon any national bank designated as a depositary of the United States, and which shall be represented on the books of either of such offices as standing to the credit of any disbursing officer, and which were issued to facilitate the payment of warrants, or for any other purpose in liquidation of a debt due from the United States, and which have for three years or more remained outstanding, unsatisfied, and unpaid, shall be deposited by the Treasurer, to be covered into the Treasury by warrant, and to be carried to the credit of the parties in whose favor such certificates, drafts, or checks were respectively issued, or to the persons who are entitled to receive pay therefor, and into an appropriation account to be denominated "outstanding liabilities."[1]

Liabilities outstanding three or more years to be deposited in the Treasury.
May 2, 1866, c. 70, ss. 1, 4, v. 14, pp. 41, 42.
Sec. 306, R. S.

310. The certificate of the Secretary of the Treasury, stating that the amount of any draft issued by the Treasurer, to facilitate the payment of a warrant directed to him for payment, has remained outstanding and unpaid

Vouchers for drafts remaining unpaid.
May 2, 1866, c. 70, s. 2, v. 14, p. 41, July 31, 1894, s. 16, v. 28, p. 210.
Sec. 307, R. S.

---

[1] When a claim passes into the form of checks, its legal character changes from that of a demand for goods sold and delivered to a claim represented by the checks given in liquidation of the original demand. The fund established by section 306, Revised Statutes, bears upon it the impress of a trust, and the statutes of limitation can not be set up against money credited to the claimant in the permanent appropriation for outstanding liabilities. Such money is held as a trust fund payable on demand without limit of time. 32 Ct. Cls., 30; U. S. *v.* Taylor, 104 U. S., 216.

for three years or more, and has been deposited and covered into the Treasury in the manner prescribed by the preceding section, shall be, when attached to any such warrant, a sufficient voucher in satisfaction of any such warrant or part of any warrant, the same as if the drafts correctly indorsed and fully satisfied were attached to such warrant or part of warrant. And all such moneys mentioned in this and in the preceding section shall remain as a permanent appropriation for the redemption and payment of all such outstanding and unpaid certificates, drafts, and checks.

Payment of outstanding drafts.
May 2, 1866, c. 70, s. 3, v. 14, p. 42.
Sec. 308, R. S.

311. The payee or the bona fide holder of any draft or check the amount of which has been deposited and covered into the Treasury pursuant to the preceding sections, shall, on presenting the same to the proper officer of the Treasury, be entitled to have it paid by the settlement of an account and the issuing of a warrant in his favor, according to the practice in other cases of authorized and liquidated claims against the United States. *Sec. 308, R. S.*

Accounts of disbursing officers unchanged for three years.
May 2, 1866, c. 70, s. 5, v. 14, p. 42.
Sec. 309, R. S.

312. The amounts, except such as are provided for in section three hundred and six, of the accounts of every kind of disbursing officer, which shall have remained unchanged, or which shall not have been increased by any new deposit thereto, nor decreased by drafts drawn thereon, for the space of three years, shall in like manner be covered into the Treasury, to the proper appropriation to which they belong; and the amounts thereof shall, on the certificate of the Treasurer that such amount has been deposited in the Treasury, be credited by the proper accounting officer of the Department of the Treasury on the books of the Department, to the officer in whose name it had stood on the books of any agency of the Treasury, if it appears that he is entitled to such credit.

CHAPTER VI.

THE POST-OFFICE DEPARTMENT.

Par.
313. Establishment of the Post-Office Department.
314. Oath of office.
315. Oath, before whom taken.
316. Classes of mail matter. First class.
317. Rates of postage. Soldiers' letters.
318. Special-delivery stamps.
319. Specially stamped letters to be delivered.
320. Letters on official business may be sent free. Penalty for using official envelopes to avoid payment of postage.
321. Official envelopes to be provided. How franked.
322, 323. Senators, members, etc., may send documents free.
324, 325. Extension of franking privilege. Official mail of Smithsonian Institution.
326. Return penalty envelopes.
327. Mail matter of Executive Departments, etc., may be registered free.
328. Postmaster-General to contract for all envelopes for Executive Departments.
329–331. Post-offices at military camps.

313. There shall be at the seat of Government an Executive Department to be known as the Post-Office Department, and a Postmaster-General, who shall be the head thereof, and who shall be appointed by the President, by and with the advice and consent of the Senate, and who may be removed in the same manner; and the term of the Postmaster-General shall be for and during the term of the President by whom he is appointed, and for one month thereafter, unless sooner removed.

Establishment of the Post-Office Department.
May 8, 1794, c. 23, s. 3, v. 1, p. 357; June 8, 1872, c. 335, ss. 1, 2, v. 17, p. 283.
Sec. 358, R. S.

314. Before entering upon the duties of his office and before he shall receive any salary the Postmaster-General and each of the persons employed in the postal service shall respectively take and subscribe before some magistrate or other competent officer the following oath: "I, A. B., do solemnly swear (or affirm) that I will faithfully perform all the duties required of me, and abstain from everything forbidden by the laws in relation to the establishment of post-offices and post-roads within the United States; and that I will honestly and truly account for and pay over any money belonging to the said United States which may come into my possession or control; and I also further swear that

Oath of office.
June 8, 1872, c, 335, s. 15, v. 17, p. 287.
Mar. 5, 1874, s. 15, v. 18, p. 19.
Sec. 391, R. S.

I will support the Constitution of the United States; so help me God." *Sec. 15, act of March 5, 1874 (18 Stat. L., 19).*

Oath, before whom taken. June 8, 1872, c. 335, s. 15, v. 17, p. 287. Mar. 5, 1874, s. 15, v. 18, p. 19. Sec. 392, R. S.

315. This oath or affirmation may be taken before any officer, civil or military, holding a commission under the United States, and such officer is hereby authorized to administer and certify such oath or affirmation. Ibid.

CLASSIFICATION OF MAIL MATTER.

Classes of mail matter. Mar. 3, 1879, s. 7, v. 20, p. 358.

316. Mailable matter shall be divided into four classes:

First, written matter;

Second, periodical publications;

Third, miscellaneous printed matter;

Fourth, merchandise.

First class.

Mailable matter of the first class shall embrace letters, postal cards, and all matters wholly or partly in writing, except as hereinafter provided.[1]

RATES OF LETTER POSTAGE.

Rates of postage. Mar. 3, 1885, vol. 23, p. 386.

Soldiers' letters.

317. On mailable matter of the first class, except postal cards and drop letters, postage shall be prepaid at the rate of two cents for each ounce or fraction thereof; postal cards shall be transmitted through the mails at a postage charge of one cent each, including the cost of manufacture; and drop letters shall be mailed at the rate of two cents per ounce or fraction thereof, including delivery at letter-carrier offices, and one cent for each ounce or fraction thereof where free delivery by carrier is not established. The Postmaster-General may, however, provide by regulation, for transmitting unpaid and duly certified letters of soldiers, sailors, and marines in the service of the United States to their destination, to be paid on delivery.[2] *Act of March 3, 1885 (23 Stat. L., 386).*

SPECIAL DELIVERY.

Special-delivery stamps. Sec. 3, Mar. 3, 1885, vol. 23, p. 386.

318. A special stamp of the face valuation of ten cents may be provided and issued, whenever deemed advisable or expedient, in such form and bearing such device as may meet the approval of the Postmaster-General, which, when attached to a letter, in addition to the lawful postage thereon, the delivery of which is to be at a free-delivery office, or at any city, town, or village containing a population of four thousand or over, according to the Federal census, shall be regarded as entitling such letter to immediate delivery within the carrier limit of any free-delivery office which may be designated by the Postmaster-General as a special-delivery office, or within one mile of the post-office at any other office coming within the provisions of this section which may in like manner be designated as a special-delivery office. *Sec. 3, act of March 3, 1885 (23 Stat. L., 386).*

---

[1] For description of matter embraced in the second, third, and fourth classes see the act of March 3, 1879 (20 Stat. L., 358).

[2] This statute replaces the corresponding provision of the act of March 3, 1879, (20 Stat. L., 358.)

Specially stamped letters to be delivered. Sec. 4, *ibid.*

319. Such specially stamped letters shall be delivered from seven o'clock ante meridian up to twelve o'clock midnight at offices designated by the Postmaster-General under section three of this act. *Sec. 4, ibid.*

OFFICIAL LETTERS.

Letters, etc., on official business may be sent free.

Sec. 5, Mar. 3, 1877, v. 19, p. 335.

Penalty for using official envelopes to avoid payment of postage

320. It shall be lawful to transmit through the mail, free of postage, any letters, packages, or other matters relating exclusively to the business of the Government of the United States: *Provided*, That every such letter or package to entitle it to pass free shall bear over the words "Official business" an endorsement showing also the name of the department, and, if from a bureau or office, the names of the department and bureau or office, as the case may be, whence transmitted. And if any person shall make use of any such official envelope to avoid the payment of postage on his private letter, package, or other matter in the mail, the person so offending shall be deemed guilty of a misdemeanor, and subject to a fine of three hundred dollars, to be prosecuted in any court of competent jurisdiction.[1] *Sec. 5, act of March 3, 1877 (19 Stat. L., 335).*

Official envelopes to be provided. Sec. 6, *ibid.*

Indorsement thereon.

321. For the purpose of carrying this act into effect, it shall be the duty of each of the Executive Departments of the United States to provide for itself and its subordinate offices the necessary envelopes; and in addition to the indorsement designating the department in which they are to be used, the penalty for the unlawful use of these envelopes shall be stated thereon. *Sec. 6, ibid.*

---

[1] For regulations respecting the use of penalty envelopes in the transmission of official correspondence, see paragraphs 813–817 Army Regulations of 1895, Circular 12, A. G. O., 1895; Circulars of June 29, 1895; July 13, 1895, and G. O. 8, A. G. O., 1897.

These envelopes are for use in domestic correspondence only, and will not cover the transportation of letters to foreign countries, upon which postage stamps must be used.

Senators, members, etc., may send documents free
Sec. 7, *ibid.*

322. Senators, Representatives, and Delegates in Congress, the Secretary of the Senate, and Clerk of the House of Representatives may send and receive through the mail all public documents printed by order of Congress;[1] and the name of each Senator, Representative, Delegate, Secretary of the Senate, and Clerk of the House shall be written thereon, with the proper designation of the office he holds; and the provisions of this section shall apply to each of the persons named therein until the first day of December following the expiration of their respective terms of office. *Sec. 7, ibid.*

How franked.

Correspondence with officials, etc.
June 3, 1898, v. 30, p. 443.

323. Hereafter the Vice-President, Members and Members-elect of and Delegates and Delegates-elect to Congress shall have the privilege of sending free through the mails, and under their frank, any mail matter to any Government official or to any person, correspondence not exceeding two ounces in weight, upon official or departmental business. *Act of June 3, 1898* (*30 Stat. L.*, *443*).

Extension of franking privilege.
Sec. 3, July 5, 1884, v. 23, p. 158.

324, 325. The provisions of the fifth and sixth sections of the act entitled "An act establishing post routes, and for other purposes" approved March third, eighteen hundred and seventy-seven, for the transmission of official mail matter, be, and they are hereby, extended to all officers of the United States Government, not including members of Congress, the envelopes of such matter in all cases to bear appropriate indorsements containing the proper designation of the office from which or officer from whom the same is transmitted, with a statement of the penalty for their misuse. And the provisions of said fifth and sixth sections are hereby likewise extended and made applicable to all official mail matter of the Smithsonian Institution. *Sec. 3, act of July 5, 1884* (*23 Stat. L.*, *158*).

Official mail matter of Smithsonian Institution.

Return penalty envelopes.

326. Any Department or officer authorized to use the penalty envelopes may inclose them with return address to any person or persons from or through whom official information is desired, the same to be used only to cover such official information, and indorsements relating thereto. *Ibid.*

Mail matter of Executive Departments, etc., may be registered free.

327. Any letter or packet to be registered by either of the Executive Departments, or bureaus thereof, or by the Agricultural Department, or by the Public Printer, may be registered without the payment of any registry fee; and any part paid letter or packet addressed to either of said departments or bureaus may be delivered free; but where there is good reason to believe the omission to prepay the full postage thereon was intentional, such letter or packet shall be returned to the sender: *Provided further*, That this act shall not extend or apply to pension agents or other officers who receive a fixed allowance as compensation for their services, including expenses of postages. And section thirty-nine hundred and fifteen of the Revised Statutes of the United States, so far as the same relates to stamps and stamped envelopes for official purposes, is hereby repealed. *Sec. 3, act of July 5, 1884 (23 Stat. L., 158).*

---

[1] Extended to letters addressed officially to any officer of the Government by section 3, act of March 3, 1891 (26 Stat. L., 1081).

PURCHASE OF ENVELOPES FOR USE OF THE EXECUTIVE DEPARTMENTS.

Postmaster-General to contract for all envelopes for Executive Departments.
Sec. 96, Jan. 12, 1895, v. 28, p. 624.

328. The Postmaster-General shall contract for all envelopes, stamped or otherwise, designed for sale to the public, or for use by his own or other Departments, and may contract for them to be plain or with such printed matter as may be prescribed by the Department making requisition therefor: *Provided*, That no envelope furnished by the Government shall contain any business address or advertisement.[1] *Sec. 96, act of January 12, 1895 (28 Stat. L., 624).*

ESTABLISHMENT OF POST-OFFICES AT MILITARY CAMPS.

Establishment of post-offices.
June 6, 1898, v. 30, p. 432.

329. During the continuance of the existing war the Postmaster-General may, in his discretion, establish a temporary post-office at any military post or camp for the purpose of supplying the officers and troops there encamped with mails, the location of which post-office may at any time be changed to any other post or camp. On the establishment of such post-office he shall cooperate with the Secretary of War or officer commanding such post or camp for the purpose of securing the detail of an officer of the Regular or Volunteer Army of suitable rank to act as postmaster, who shall, when the exigency will permit, execute a bond to the United States as such, and of a sufficient number of noncommissioned officers and privates to act as clerks in said post-office, who shall serve as such without additional salary, pay, or compensation other than that attaching to their rank and position in the Army. Each of said persons shall, before entering upon the discharge of his duties, take the oath prescribed for persons employed in the postal service. In any case where it is deemed impracticable by the military authorities to detail persons from the Army to act as postmaster or clerks the Postmaster-General is authorized to appoint a civilian as postmaster, and also to make a special order allowing to him reasonable compensation for clerical services and to meet the necessary expenses of said office, as well as a proportionate increase of salary to the postmaster during the period of such extraordinary business as may attach to his office, under the provisions of section thirty-eight hundred and sixty-three, Revised Statutes, payable out of the appropriations for the postal service. He may also provide for the issue and payment of money orders at any post-office established under the provisions of this act after the postmaster shall have given bond as required by law. *Act of June 6, 1898 (30 Stat. L., 432).*

---

[1] In the event of an exigency requiring the immediate delivery of envelopes, the head of the Department in which the exigency exists may make the purchase required by the exigency. XXI Opin. Att. Gen., 181.

Supplies.
Sec. 2, *ibid.*

330. The Postmaster-General shall supply to post-offices referred to in the preceding section all necessary postage stamps, stamped envelopes, postal cards, and other supplies of whatever description. He may also prescribe regulations for the conduct of the business at such post-offices in conformity, so far as the same may be applicable, to the regulations relating to the ordinary postal service. *Sec. 2, ibid.*

Branch offices.
Sec. 3, *ibid.*

331. In any case where, in the judgment of the Postmaster-General, any military post or camp can be better and more economically supplied by a branch post-office, he may, without reference to its distance from the main office, establish the same and meet the expenses thereof by special order, as in the case of post-offices referred to in the preceding section. [1]*Sec. 3, ibid.*

---

[1] The act of June 2, 1900 (31 Stat. L., 253), and subsequent acts of appropriation make provision for the "postal service in the Philippine Islands or territory held by military occupation, and for additional transportation to and from said territory, also including postal service for military camps or stations, to be used in the discretion of the Postmaster-General."

CHAPTER VII.

THE DEPARTMENT OF JUSTICE—HABEAS CORPUS—THE COURT OF CLAIMS.

THE DEPARTMENT OF JUSTICE.

Par.
332. Establishment of Department of Justice.
333. Solicitor-General.
334. Title to land to be examined.
335. Suspension of statute.
336. Duties of Attorney-General.
337. Opinion of Attorney-General upon questions of law.
338. Legal advice to Departments of War and Navy.
339. Reference of questions by Attorney-General to subordinates.

Par.
340. Conduct and argument of cases.
341. Performance of duty by officers of Department of Justice.
342. Officers of the Department to perform all legal services required for other Departments.
343. Attendance of counsel.
344. Interest of United States in pending suits, who may attend to.
345. Publication of opinions.
346–361. The writ of habeas corpus.
362–417. The Court of Claims.

332. There shall be at the seat of government an Executive Department to be known as the Department of Justice, and an Attorney-General, who shall be the head thereof. June 22, 1870, c. 150, s. 1, v. 16, p. 162.

Establishment of Department of Justice.

Sept. 24, 1789, c. 20, s. 35, v. 1, p. 92; **Sec. 346, R. S.**

333. There shall be in the Department of Justice an officer learned in the law, to assist the Attorney-General in the performance of his duties, called the Solicitor-General, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be entitled to a salary of seven thousand dollars a year. In case of a vacancy in the office of Attorney-General, or of his absence or disability, the Solicitor-General shall have power to exercise all the duties of that office.

Solicitor-General.

June 22, 1870, c. 150, s. 2, v. 16, p. 162; July 7, 1884, v. 23, p. 192. **Sec. 347, R. S.**

EXAMINATION OF TITLES.

334. No public money shall be expended upon any site or land purchased by the United States for the purposes of erecting thereon any armory, arsenal, fort, fortification, navy-yard, custom-house, light-house, or other public building, of any kind whatever, until the written opinion of the

Title to land to be purchased by the United States. Sept. 11, 1841, Res. No. 6, v. 5, p. 468. **Sec. 355, R. S.**

Attorney-General shall be had in favor of the validity of the title,[1] nor until the consent of the legislature of the State in which the land or site may be, to such purchase, has been given. The district attorneys of the United States, upon the application of the Attorney-General, shall furnish any assistance or information in their power in relation to the titles of the public property lying within their respective districts. And the Secretaries of the Departments, upon the application of the Attorney-General, shall procure any additional evidence of title which he may deem necessary, and which may not be in the possession of the officers of the Government, and the expense of procuring it shall be paid out of the appropriations made for the contingencies of the Departments respectively.[1]

Suspension of statute in cases of emergency.
J. R. 18, Apr. 11, 1898, v. 30, p. 737.

335. In case of emergency when, in the opinion of the President, the immediate erection of any temporary fort or fortification is deemed important and urgent, such temporary fort or fortification may be constructed upon the written consent of the owner of the land upon which such work is to be placed; and the requirements of section three hundred and fifty-five of the Revised Statutes shall not be applicable in such cases. *Joint Res. No. 18, of April 11, 1898 (30 Stat. L., 751).*

OPINIONS OF ATTORNEY-GENERAL.

Duties of Attorney-General.
Sec. 354, R. S.

336. The Attorney-General shall give his advice and opinion upon questions of law, whenever required by the President.

Opinion of Attorney-General upon questions of law.
June 22, 1870, c. 150, s. 6, v. 16, p. 163. **Sec. 356, R. S.**

337. The head of any Executive Department may require the opinion of the Attorney-General on any questions of law arising in the administration of his Department.[2]

Legal advice to Departments of War and Navy.
June 22, 1870, c. 150, s. 6, v. 16, p. 163.
Sec. 357, R. S.

338. Whenever a question of law arises in the administration of the Department of War or the Department of the Navy, the cognizance of which is not given by statute to some other officer from whom the head of the Department may require advice, it shall be sent to the Attorney-

---

[1] The Attorney-General in certifying the title of land purchased by the Government must look at the question as one of pure law, and can not relax the rules of law on account either of the desirableness of the object or the smallness of the value of the land. VI Opin. Att. Gen., 432. See the chapters entitled THE PUBLIC LANDS, CONTRACTS AND PURCHASES, AND THE CORPS OF ENGINEERS. See, also, I Compt. Dec., 348.

[2] The Attorney-General is not authorized to give an official opinion in any case, except on the call of the President or some one of the heads of Departments. I Opin. Att. Gen., 211. Subordinate officers of the Government who desire an official opinion of the Attorney-General must seek it through the head of the Department to which they are accountable. Ibid.

General, to be by him referred to the proper officer in his Department, or otherwise disposed of as he may deem proper.[1]

Reference of questions by Attorney-General to subordinates.
June 22, 1870, c. 170, s. 4, v. 16, p. 162.
Sec. 358, R. S.

339. Any question of law submitted to the Attorney-General for his opinion, except questions involving a construction of the Constitution of the United States, may be by him referred to such of his subordinates as he may deem appropriate, and he may require the written opinion thereon of the officer to whom the same may be referred. If the opinion given by such officer is approved by the Attorney-General, such approval indorsed thereon shall give the opinion the same force and effect as belong to the opinions of the Attorney-General.[2]

Conduct and argument of cases.
Sept. 24, 1789, c. 20, s. 35, v. 1, p. 92; June 25, 1868, c. 71, s. 5, v. 15, p. 75; June 22, 1870, c. 150, s. 5, v. 16, p. 162.
Sec. 359, R. S.

340. Except when the Attorney-General in particular cases otherwise directs, the Attorney-General and Solicitor-General shall conduct and argue suits and writs of error and appeals in the Supreme Court and suits in the Court of Claims in which the United States is interested, and the Attorney-General may, whenever he deems it for the interest of the United States, either in person conduct and argue any case in any court of the United States in which the United States is interested, or may direct the Solicitor-General or any officer of the Department of Justiceto to do so.

---

[1] The Attorney-General will only give official opinions on questions of law arising on facts which are authoritatively stated by a head of Department. X ibid., 267. He has no authority to settle questions of fact, nor to give advice on questions of law, except for the assistance of the officer calling for his opinion on points stated. He takes the facts as they are stated to him and predicates his opinion on them. III ibid., 309. It is not the duty of the Attorney-General to give opinions on questions of fact, nor to review the proceedings of a court-martial in search of questions of law. V ibid., 626.

The Attorney-General will not give a speculative opinion on an abstract question of law, which does not arise in any case presented for the action of an Executive Department. XI ibid., 189. Nor will he review the opinion of a former Attorney-General, unless a proper case is presented therefor, and submitted by the head of a Department. Ibid.

Where an official opinion from the Attorney-General is desired on questions of law arising on any case, the request should be accompanied by a statement of the material facts in the case, and also the precise questions on which advice is wanted. XIV ibid., 367. See note to paragraph 339, *post.*

[2] The opinions of successive Attorneys-General, possessed of greater or less amount of legal acumen, acquirement, and experience, have come to constitute a body of legal precedents and exposition, having authority the same in kind, if not the same in degree, with decisions of the courts of justice. VI ibid., 326. The opinion of the Attorney-General for the time being is, in terms, advisory to the Secretary who calls for it; but it is obligatory as the law of the case unless, on appeal by such Secretary to the common superior of himself and the Attorney-General, namely, the President of the United States, it be by the latter overruled. VII ibid., 692. The Attorney-General will not give a speculative opinion, on an abstract question of law, which does not arise in any case presented for the action of an Executive Department. XIX ibid., 189. He will only give opinions on questions of law arising on facts which are authoritatively stated by a head of Department. X ibid., 267. Although the acts prescribing the duties of the Attorneys-General do not declare the effect of their advice, it has been the practice of the Departments to heed it. It has been found greatly advantageous, if not absolutely necessary, to have uniformity of action upon analogous questions and cases; and that result is more likely to be attained under the guidance of a single Department, constituted for the purpose, than by a disregard of its opinions and advice. V ibid., 97.

Performanceof duty by officers of Department of Justice.
June 22, 1870, c. 150, s. 14, v. 16, p. 164.
Sec. 360, R. S.

341. The Attorney-General may require any solicitor or officer of the Department of Justice to perform any duty required of the Department or any officer thereof.

Officers of the Department to perform all legal services required for other Departments.
June 22, 1870, c. 150, s. 14, v. 16, p. 164.
Sec. 361, R. S.

342. The officers of the Department of Justice, under the direction of the Attorney-General, shall give all opinions and render all services requiring the skill of persons learned in the law necessary to enable the President and heads of Departments, and the heads of Bureaus and other officers in the Departments, to discharge their respective duties; and shall, on behalf of the United States, procure the proper evidence for, and conduct, prosecute, or defend all suits and proceedings in the Supreme Court and in the Court of Claims, in which the United States, or any officer thereof, as such officer, is a party or may be interested; and no fees shall be allowed or paid to any other attorney or counselor at law for any service herein required of the officers of the Department of Justice, except in the cases provided by section three hundred and sixty-three.

Attendance of counsel.
Feb. 14, 1871, c. 51, s. 3, v. 16, p. 412.
Sec. 364, R. S.

343. Whenever the head of a Department or Bureau gives the Attorney-General due notice that the interests of the United States require the service of counsel upon the examination of witnesses touching any claim, or upon the legal investigation of any claim, pending in such Department or Bureau, the Attorney-General shall provide for such service.

Interest of United States in pending suits, who may attend to.
June 22, 1870, c. 150, s. 5, v. 16, p. 162.
Sec. 367, R. S.

344. The Solicitor-General, or any officer of the Department of Justice, may be sent by the Attorney-General to any State or District in the United States to attend to the interests of the United States in any suit pending in any of the courts of the United States, or in the courts of any State, or to attend to any other interest of the United States.

Publication of opinions.
June 22, 1870, c. 150, s. 18, v. 16, p. 165.
Sec. 383, R. S.

345. The Attorney-General shall from time to time cause to be edited, and printed at the Government Printing Office, an edition of one thousand copies of such of the opinions of the law officers herein authorized to be given as he may deem valuable for preservation in volumes, which shall be, as to size, quality of paper, printing, and binding, of uniform style and appearance, as nearly as practicable, with volume eight of such opinions, published, by Robert Farn-

ham, in the year eighteen hundred and sixty-eight. Each volume shall contain proper headnotes, a complete and full index, and such footnotes as the Attorney-General may approve. Such volumes shall be distributed in such manner as the Attorney-General may from time to time prescribe.[1]

HABEAS CORPUS.

Par.
346. Power of courts to issue writs of habeas corpus.
347. Power of judges to grant writs of habeas corpus.
348. Writs of habeas corpus when prisoner is in jail.
349. Application for the writ of habeas corpus.
350. Allowance and direction of the writ.
351. Time of return.
352. Form of return.
353. Body of the party to be produced.
354. Day for hearing.
Par.
355. Denial of return, counter allegations, amendments.
356. Summary hearing; disposition of party.
357. In cases involving the law of nations, notice to be served on State attorney-general.
358. Appeals in cases of habeas corpus to circuit court.
359. Appeal to Supreme Court.
360. Appeals, how taken.
361. Pending proceedings in certain cases, action by State authority void.

346. The Supreme Court and the circuit and district courts shall have power to issue writs of habeas corpus.[2]

Power of courts to issue writs of habeas corpus.
Sec. 751, R. S.

---

[1] *Table showing the period covered by each of the nineteen volumes of the Official Opinions of the Attorneys-General of the United States.* (*a*)

Opinions.	Period.		Opinions.	Period.	
	From—	To—		From—	To—
Vol. 1	Aug. 21, 1791	June 6, 1825	Vol. 12	Aug. 1, 1866	Mar. 3, 1869
2	June 9, 1825	Sept. 21, 1835	13	Mar. 11, 1869	Dec. 21, 1871
3	Oct. 10, 1835	Feb. 10, 1842	14	Jan. 15, 1872	Sept. 30, 1874
4	Feb. 11, 1842	June 28, 1848	15	May 27, 1875	Mar. 8, 1878
5	July 17, 1848	Mar. 3, 1853	16	Apr. 29, 1878	Dec. 22, 1880
6	Mar. 12, 1853	Oct. 7, 1854	17	Jan. 6, 1881	Apr. 19, 1884
7	Oct. 9, 1854	July 9, 1856	18	Apr. 23, 1884	Apr. 13, 1887
8	July 10, 1856	Mar. 4, 1857	19	Apr. 16, 1887	Dec. 31, 1890
9	Mar. 24, 1857	Dec. 17, 1857	20	Jan. 14, 1891	Mar. 26, 1894
10	Jan. 3, 1861	Oct. 9, 1863	21	Nov. 27, 1893	Nov. 19, 1897
11	Nov. 6, 1863	July 14, 1866			

a From Vol. III, Digest of Decisions of the Second Comptroller. There is also a Digest of the Opinions of the several Attorneys-General contained in Volumes I to XVI, inclusive.

[2] The Supreme Court may issue the writ in virtue of its original jurisdiction only in cases affecting ambassadors, other public ministers, and consuls, or in those to which a State is a party. Ex parte Hung Hang, 108 U. S., 552. In the exercise of its appellate jurisdiction, it may issue the writ for the purpose of reviewing the judicial dicision of some inferior officer or court. Ibid., 553; Ex parte Bollman and Swartwout, 4 Cr., 75; Ex parte Watkins, 7 Pet., 568; Ex parte Wells, 18 How., 307, 328; Ex parte Yerger, 8 Wall., 85; Ex parte Lange, 18 Wall., 163; Ex parte Parks, 93 U. S., 18; Ex parte Virginia, 100 U. S., 339; Ex parte Siebold, 100 U. S., 371. Application to the Supreme Court for the issue of the writ must show that the case is within its jurisdiction. In re Milburn, 9 Peters, 704.

Power of judges to grant writs of habeas corpus. Sept. 24, 1789, c. 20, s. 14, v. 1, p. 81; Apr. 10, 1869, c. 22, s. 2, v. 16, p. 44; Mar. 2, 1833, c. 57, s. 7, v. 4, p. 634; Feb. 5, 1867, c. 28, s. 1, v. 14, p. 385; Aug. 29, 1842, c. 257, s. 1, v. 5, p. 539. **Sec. 752, R. S.**

347. The several justices and judges of the said courts, within their respective jurisdictions, shall have power to grant writs of habeas corpus for the purpose of an inquiry into the cause of restraint of liberty.

Writ of habeas corpus when prisoner is in jail. Sept. 24, 1789, c. 20, s. 14, v. 1, p. 81; Mar. 2, 1833, c. 57, s. 7, v. 4, p. 634; Feb. 5, 1867, c. 28, s. 1, v. 14, p. 385; Aug. 29, 1842, c. 257, s. 1, v. 5, p. 539. **Sec. 753, R. S.**

348. The writ of habeas corpus shall in no case extend to a prisoner in jail, unless where he is in custody under or by color of the authority of the United States, or is committed for trial before some court thereof; or is in custody for an act done or omitted in pursuance of a law of the United States, or of an order, process, or decree of a court or judge thereof; or is in custody in violation of the Constitution or of a law or treaty of the United States; or, being a subject or citizen of a foreign state, and domiciled therein, is in custody for an act done or omitted under any alleged right, title, authority, privilege, protection, or exemption claimed under the commission, or order, or sanction of any foreign state, or under color thereof, the validity and effect whereof depend upon the law of nations; or unless it is necessary to bring the prisoner into court to testify.[1]

Application for the writ of habeas corpus. Feb. 5, 1867, c. 28, s. 1, v. 14, p. 385. **Sec. 754, R. S.**

349. Application for writ of habeas corpus shall be made to the court, or justice, or judge authorized to issue the same, by complaint in writing, signed by the person for whose relief it is intended, setting forth the facts concerning the detention of the party restrained, in whose custody he is detained, and by virtue of what claim or authority, if known. The facts set forth in the complaint shall be verified by the oath of the person making the application.[2]

Allowance and direction of the writ. Feb. 5, 1867, c. 28, s. 1, v. 14, p. 385. **Sec. 755, R. S.**

350. The court, or justice, or judge to whom such application is made shall forthwith award a writ of habeas corpus, unless it appears from the petition itself that the party is not entitled thereto. The writ shall be directed to the person in whose custody the party is detained.[3]

---

[1] A justice of the Supreme Court may issue the writ in any part of the United States where he happens to be, and may make it returnable to himself, or may refer it to the court for determination. Ex parte Clarke, 100 U. S., 399, 403. The writ can not be made to perform the function of a writ of error. Ex parte Virginia, 100 U. S., 339; Ex parte Reed, ibid., 13, 23. The writ may be used in connection with the writ of certiorari to determine whether the court below acted with jurisdiction. Ex parte Lange, 18 Wall., 163; Ex parte Virginia, 100 U. S., 339; Ex parte Siebold, ibid., 371. This section does not require that the law therein mentioned shall be by express act of Congress. Any obligation fairly and properly inferable from the Constitution, or any duty of a United States officer to be derived from the general scope of his duties, is a "law" within the meaning of the statute. Cunningham *v.* Neagle, 135 U. S., 1. See also Ex parte Dorr, 3 How., 103; Ex parte Barnes, 1 Sprague, 133; Ex parte Bridges, 2 Woods, 428.

[2] See Craemer *v.* Washington State, 168 U. S., 124; Whitten *v.* Tomlinson, 160 U. S., 231; Kohe *v.* Lehlback, ibid., 293; Church on Habeas Corpus, 2d ed., sec. 91.

[3] In the courts of the United States the practice prevailing at the common law at the time of the adoption of the Constitution is still pursued. The writ may be granted

351. Any person to whom such writ is directed shall make due return thereof within three days thereafter, unless the party be detained beyond the distance of twenty miles; and if beyond that distance and not beyond a distance of a hundred miles, within ten days; and if beyond the distance of a hundred miles, within twenty days.[2]

Time of return. Feb. 5, 1867, c. 28, s. 1, v. 14, p. 385. Sec. 756, R. S.

---

in term time or by a justice or judge of a Federal court, having jurisdiction to issue the writ, in vacation, or at any time, and may be issued by a justice of the Supreme Court in any part of the country, wherever he may be. Hurd, Hab. Corp., 214; U. S. *v.* Clarke, 100 U. S., 403. The usual course of proceeding is for the court, on the application of the prisoner for a writ of habeas corpus, to issue the writ and, on its return, to hear and dispose of the case; but where the cause of imprisonment is fully shown by the petition, the court may, without issuing the writ, consider and determine whether, upon the grounds presented in the petition, the prisoner, if brought before the court, would be discharged. Ex parte Milligan, 4 Wall., 2. Under the requirements of this section, the writ, though a matter of right, does not issue as a matter of course and may be refused if, upon the showing made in the petition, it appear that the petitioner, if brought into court would be remanded. In re King, 51 F. R., 434; In re Jordan, 49 F. R., 238; In re Haskell, 52 F. R., 795. Suspension of the privilege of the writ does not suspend the writ itself. The writ issues as a matter of course; and, on its return, the court decides whether the applicant is denied the privilege of proceeding any further. Ex parte Milligan, 4 Wall., 2.

[2] The duty of an officer of the Army upon whom a writ of habeas corpus is served is prescribed in the following paragraphs of the Army Regulations of 1901:

Should a writ of habeas corpus issued by a State court or judge be served upon an Army officer commanding him to produce an enlisted man or general prisoner and show cause for his detention, the officer will decline to produce in court the body of the person named in the writ, but will make respectful return in writing to the effect that the man is a duly enlisted soldier of the United States or a general prisoner under sentence of court-martial, as the case may be, and that the Supreme Court of the United States has decided that a magistrate or court of a State has no jurisdiction in such a case.

A writ of habeas corpus issued by a United States court or judge will be promptly obeyed. The person alleged to be illegally restrained of his liberty will be taken before the court from which the writ has issued and a return made setting forth the reasons for his restraint. The officer upon whom such a writ is served will at once report by telegraph the fact of such service direct to the Adjutant-General of the Army and to the Commanding General of the Department.

1. The return under paragraph 1075, Army Regulations, will be made in accordance with Form A of this order, and will refer, as in last paragraph of that form, to the brief of authorities which follows the forms of this order, and a copy of that brief will be annexed to the return. Should the court order the discharge of the party, the officer making the return, or counsel, should note an appeal pending instructions from the War Department, and he will report to the Adjutant-General the action taken by the court and forward a copy of the opinion of the court as soon as it can be obtained.

2. The return under paragraph 1074, Army Regulations, will be made in accordance with Form B of this order, but a copy of the brief of authorities is not intended to be attached to the return to writ of habeas corpus issuing from a State court. G. O. 127, A. G. O., 1900.

FORM A.

HABEAS CORPUS BY UNITED STATES COURT.

RETURN TO WRIT.

In re (name of party held) ——— ———.

[Writ of habeas corpus—Return of respondent.]

To the (court or judge) ——— ———.

The respondent, Maj. ——— ———, U. S. Infantry, upon whom has been served a writ of habeas corpus for the production of ——— ———, respectfully makes return and states that he holds the said ——— ——— by authority of the United

Form of return. Feb. 5, 1867, c. 28, s. 1, v. 14, p. 385. Sec. 757, R. S.

352. The person to whom the writ is directed shall certify to the court, or justice, or judge before whom it is returnable the true cause of the detention of such party.

States as a soldier in the United States Army (or "as a general prisoner under sentence of general court-martial") under the following circumstances:

That the said ——— ——— was duly enlisted as a soldier in the service of the United States at ———, ———, on ——— —, 1900, for a term of —— years. [If the offense is fraudulent enlistment, this recital should be omitted.]

[Here state the offense. If it is fraudulent enlistment by representing himself to be of age, it may be stated as follows:]

That on the —— day of ———, 1900, at ———, ———, the said ——— ———, being then a minor, did fraudulently enlist in the military service of the United States for the term of —— years, by falsely representing himself to be over twenty-one years of age, to wit: —— years and —— months; and has, since said enlistment, received pay and allowances (or either) thereunder.

[If the offense is desertion, it may be stated substantially as follows:]

That the said ——— ——— deserted said service at ———, ———, on ——— —, 1900, and remained absent in desertion until he was apprehended at ———, ———, on ——— —, 1900, by ——— ———, and was thereupon committed to the custody of the respondent as commanding officer of the post of ——— ———.

The said ——— ——— has been placed in confinement (or "arrest," as the case may be), charged with said offense, and formal charges against him therefor have been preferred, a copy of which is hereto annexed (or "are being prepared"), and that he will be brought to trial thereon as soon as practicable before a court-martial to be convened by the commanding general of the Department of ——— (or "convened by Special Orders, No. ——, dated Headquarters Department of ———, ———, 1900, a copy of which order is hereto annexed").

[If the party held is a general prisoner, the following paragraph should be substituted for the preceding paragraph:]

That the said ——— ——— was duly arraigned for said offense before a general court-martial, convened by Special Orders, No. ——, dated Headquarters Department of ———, ———, 1900, was convicted thereof by said court, and was sentenced to be ———, which sentence was duly approved on the —— day of ———, 1900, by the officer ordering the court (or "by the officer commanding said Department of ——— for the time being"), as required by the 104th article of war. A copy of the order promulgating said sentence is hereto attached.

In obedience, however, to the said writ of habeas corpus the respondent herewith produces before the court the body of the said ———, respectfully refers to the decisions cited in the annexed brief, and for the reasons set forth in this return prays this honorable court to dismiss the said writ.

——— ———,
Major, —— U. S. Infantry.

Dated ——— ———,
——— ———, 1900.

FORM B.

HABEAS CORPUS BY STATE COURT.

RETURN TO WRIT.

[Make return as in case of writ by a United States court, except as to last paragraph, for which substitute as follows:]

And said respondent further makes return that he has not produced the body of the said ———, because he holds him by authority of the United States as above set forth, and that (this court or your honor, as the case may be) is without jurisdiction in the premises, and he respectfully refers to the decisions of the Supreme Court of the United States in Ableman *v.* Booth, 21 Howard, 506, and Tarble's case, 13 Wallace, 397, as authority for his action, and prays (this court or your honor) to dismiss the writ.

——— ———,
Major, —— U. S. Infantry.

Dated ——— ———,
——— ———, 1900.

Brief to be filed with return to a writ of habeas corpus issued by United States court in case of a soldier whose discharge is sought under section 1117, Revised Statutes.

If a minor sixteen years old or over claims to be twenty-one years of age or over and enlists without the consent required by section 1117, Revised Statutes, the con-

353. The person making the return shall at the same time bring the body of the party before the judge who granted the writ.

Body of the party to be produced.
Feb. 5, 1867, c. 28, s. 1, v. 14, p. 385.
Sec. 758, R. S.

---

tract of enlistment is not voidable by the minor, nor by his parents or guardian, if at the time of the filing of the petition the soldier is held in pursuance of a sentence of a court-martial, or any step has been taken with a view to bringing him before such court.

1. CONTRACT NOT VOIDABLE BY MINOR.

(*a*) *When soldier is not in confinement.*—United States ex rel. Wagner *v.* Gibbon, 24 Federal Reporter, 135. In this case Wagner, becoming "tired of the service," sought his discharge from the Army "solely on the ground of minority at the time of enlistment." This the court refused to grant, holding that section 1117, Revised Statutes, "was made for the exclusive benefit of parents and guardians," and that, quoting from the syllabus—

"A minor over sixteen years of age, who at the time of his enlistment makes affidavit that he is twenty-one years of age, will not, on his own application, be released on habeas corpus on the ground that he was a minor at the time of his enlistment, and that the written consent of his guardian was not obtained."

(*b*) *When soldier is in confinement.*—In re Morrissey, 137 United States, 157; In re Grimley, 137 United States, 147; In re Wall, 8 Federal Reporter, 85; In re Davison, 21 Federal Reporter, 618; In re Zimmerman, 30 Federal Reporter, 176; In re Hearn, 32 Federal Reporter, 141; In re Spencer, 40 Federal Reporter, 149; In re Lawler, 40 Federal Reporter, 233; Solomon *v.* Davenport, 87 Federal Reporter, 318.

In the Morrissey case the Supreme Court of the United States settles this beyond question. Morrissey, a minor of seventeen years of age, enlisted without the consent of his mother, who was living. He deserted, remained in concealment until he reached his majority, and then presented himself before a recruiting officer and demanded his discharge from the Army on the ground that he was a minor when enlisted. The court said that the provision of section 1117, Revised Statutes, "is for the benefit of the parent or guardian, * * * but it gives no privilege to the minor. * * * An enlistment is not a contract only, but effects a change of status. It is not, therefore, like an ordinary contract, voidable by the infant. * * * The contract of enlistment was good so far as the petitioner is concerned. He was not only de facto, but de jure, a soldier—amenable to military jurisdiction."

All the cases cited are instructive as illustrative of the different circumstances under which this principle has been declared.

In the Lawler case the deserter was arrested and "held as such awaiting trial, which will be as soon as a court-martial can be convened and organized for that purpose."

In the case of Solomon *v.* Davenport, the deserter was held by a sheriff under a warrant of United States commissioner.

In the Spencer case the court said: "The authorities which have been read to me seem to establish very conclusively this rule—that the enlistment of a minor is voidable, not necessarily void; and that he does really become by such enlistment, although under age, engaged in the service of the United States, and subject to the power and jurisdiction of the military authorities; and, such being the case, the court-martial had jurisdiction to arrest and try him for the charge of desertion."

2. CONTRACT NOT VOIDABLE BY PARENTS OR GUARDIANS IF THE SOLDIER IS HELD PURSUANT TO A SENTENCE OF A COURT-MARTIAL OR ANY STEP HAS BEEN TAKEN WITH A VIEW TO BRINGING HIM BEFORE SUCH COURT.

In re Kaufman, 41 Federal Reporter, 876; In re Dohrendorf et al., 40 Federal Reporter, 148; In re Cosenow, 37 Federal Reporter, 668; In re Dowd, 90 Federal Reporter, 718; ex parte Anderson, 16 Iowa, 595; McConologue's case, 107 Massachusetts, 170.

In the Kaufman case the father sought the discharge of his son, who was held by the military authorities and had been ordered before a military court for trial as a deserter. Quoting from the syllabus: "A minor who enlists in the United States Army upon his representation that he is of age, and receives pay and clothing and afterwards deserts and is arrested as a deserter, and at the time of his petition is held by the United States awaiting trial by a court-martial for the crime of desertion,

Day for hearing.
Feb. 5, 1867, c. 28, s. 1, v. 14, p. 385.
Sec. 759, R. S.

354. When the writ is returned, a day shall be set for the hearing of the cause, not exceeding five days thereafter, unless the party petitioning requests a longer time.[1]

Denial of return, counter-allegations, amendments.
Feb. 5, 1867, c. 28, s. 1, v. 14, p. 385.
Sec. 760, R. S.

355. The petitioner or the party imprisoned or restrained may deny any of the facts set forth in the return, or may allege any other facts that may be material in the case. Said denials or allegations shall be under oath. The return and all suggestions made against it may be amended, by leave of the court, or justice, or judge, before or after the same are filed, so that thereby the material facts may be ascertained.

Summary hearing; disposition of party.

356. The court, or justice, or judge shall proceed in a summary way to determine the facts of the case, by hear-

---

will not be released under a writ of habeas corpus upon the ground that being a minor his enlistment was unlawful and contrary to the Revised Statutes of the United States."

In the Cosenow case the minor swore that he was twenty-one years and seven months old at the time of enlistment. He deserted and at the time of the filing of the petition was held in custody awaiting the action of the reviewing authority on the proceedings of the court-martial. His father sought the discharge of his son on the ground of infancy at the time of enlistment. The court refused to discharge him, holding that "an enlistment contrary to law is not void, but voidable;" that the court-martial had jurisdiction of the offense, and the soldier "must be remanded to await the result of his trial."

The Dowd case arose on the application of the mother for the release of her son, who was held under sentence of a summary court. The court held, quoting from the syllabus: "The enlistment of a minor in the Army without the consent of his parents or guardian, required by Revised Statutes, section 1117, is not void, but voidable only, and while he remains in the service under such enlistment the minor is amenable to the Articles of War, and can not be remanded to the custody of his parents by a civil court on a writ of habeas corpus while undergoing a sentence imposed on him by a court-martial for a violation of such articles."

In the Anderson case it appears that a minor enlisted without his father's consent, and being held for trial before a court-martial for desertion, his father sought his discharge on habeas corpus. The court refused to discharge the soldier, saying "he must abide by the decision of the latter court (court-martial) before the question of the validity of his enlistment can be determined in the civil courts on habeas corpus."

In McConologue's case the court said: "A minor's contract of enlistment is indeed voidable only and not void, and if, before a writ of habeas corpus is sued out to avoid it, he is arrested on charges of desertion, he should not be released by the court while proceedings for his trial by the military authorities are pending."

Under the custom of the service the parents or guardian of a minor who enlists without their consent can obtain his discharge upon application to the Secretary of War, prior to the commission of a military offense. Their rights under section 1117, Revised Statutes, are thus sufficiently protected; but when the minor has committed a military offense the interests of the public in the administration of justice are paramount to the right of the parent, and require that the soldier shall abide the consequences of his offense before the right to his discharge be passed upon. Dig. Opin. J. A. G., 389–390.

The soldier should not be allowed to escape punishment for his offense, even though his parents assert their right to his services. A minor in civil life is liable to punishment for a crime or misdemeanor, even though his confinement may interfere with the rights of his parents.

[1] If the service of the writ be prevented by military force, it will be ordered to be placed on the files of the court, to be served when practicable. Ex parte Winder, 2 Clifford, 89.

An order from a subordinate in the War Department to an officer not to obey the writ by the production of the body, is no justification to the officer. Ex parte Field, 5 Blatchford, C. C., 63.

ing the testimony and arguments, and thereupon to dispose of the party as law and justice require.[1]

Feb. 5, 1867, c. 28, s. 1, v. 14, p. 385.
Sec. 761, R. S.

In cases involving the law of nations, notice to be served on State attorney-general.
Aug. 29, 1842, c. 257, v. 5, p. 539.
Sec. 762, R. S.

357. When writ of habeas corpus is issued in the case of any prisoner who, being a subject or citizen of a foreign State and domiciled therein, is committed, or confined, or in custody, by or under the authority or law of any one of the United States, or process founded thereon, on account of any act done or omitted under an alleged right, title, authority, privilege, protection, or exemption, claimed under the commission or order or sanction of any foreign State, or under color thereof, the validity and effect whereof depend upon the law of nations, notice of the said proceeding, to be prescribed by the court, or justice, or judge at the time

---

[1] The purpose of the writ is to enable the court to inquire, first, if the petitioner is restrained of his liberty. If he is not, the court can do nothing but discharge the writ. If there is such restraint, the court can then inquire into the causes of it, and if the alleged cause is unlawful, it must then discharge the prisoner. * * * In the case of a man in the military or naval service, where he is, whether as an officer or private, always more or less subject in his movements, by the very necessity of military rule and subordination, to the orders of his superior officer, it should be quite clear that some unusual restraint upon his liberty of personal movement exists to justify the issue of the writ; otherwise every order of the superior officer directing the movements of the subordinate, which necessarily to some extentc ontrols his freedom of will, may be held to be a restraint of his liberty and the party so ordered may seek relief from obedience by means of a writ of habeas corpus. Something more than moral restraint is necessary to make a case for habeas corpus. There must be actual confinement or the present means of enforcing it. Wales *v.* Whitney, 114 U. S., 564, 571. Where a court-martial has jurisdiction of the person and of the subject-matter and is competent to pass the sentence under which the prisoner is held, its proceedings can not be collaterally impeached, and a writ of habeas corpus can not be made to perform the function of a writ of error. Ex parte Reed, 100 U. S., 13, 23; Ex parte Kearney, 7 Wheat., 38; Ex parte Watkins, 3 Pet., 193; Ex parte Milligan, 4 Wall., 2; Ex parte Mason, 105 U. S., 696; Ex parte Curtis, 106 U. S., 371; Ex parte Carrl, ibid., 521; Ex parte Bigelow, 113 U. S., 328; Davis *v.* Beason, 133 ibid., 333; In re Frederick, 149 ibid., 70; Smith *v.* Whitney, 116 U. S., 167; U. S. *v.* Grimley, 137 U. S., 147; Johnson *v.* Sayre, 158 U. S., 109; In re Boyd, 49 F. R., 48; Crossley *v.* California, 168 U. S., 640; Ex parte Lennon, 164 Fed. Rep., 320; In re Lawrence, 84 ibid, 99.

Where a medical director in the Navy, against whom charges had been preferred and in whose case a general court-martial had been ordered, was placed in arrest by the Secretary of the Navy, and notified to confine himself to the limits of the city of Washington: *Held*, That this constituted no such restraint of liberty as to sustain a writ of habeas corpus. Wales *v.* Whitney, 114 U. S., 564. Where a person is in custody under process from a State court of original jurisdiction for an alleged offense against the laws of such State, and it is claimed that he is restrained of his liberty in violation of the Constitution of the United States, the circuit court has a discretion whether it will discharge him upon a habeas corpus, in advance of his trial in the court in which he is indicted; that discretion, however, to be subordinated to any special circumstances requiring immediate action. When the State court has finally acted upon the case, the circuit court has still a discretion whether, under all the circumstances, the accused, if convicted, shall be put to his writ of error from the highest court of the State, or whether it will proceed, by writ of habeas corpus, summarily to determine whether the prisoner is restrained of his liberty in violation of the Constitution of the United States. Ex parte Royall, 117 U. S., 241, 253; Ex parte Watkins, 3 Pet., 201; Ex parte Bridges, 2 Woods, 428; Ex parte Lange, 18 Wall., 163; In re King, 51 F. R., 434; Ex parte Hanson, 28 F. R., 127, 131; In re Jordan, 49 F. R., 238; In re Lawrence, 80 ibid., 99; Ex parte Lennon, 64 ibid., 320. Where a United States marshal in custody for an act done in pursuance of a law of the United States is brought before a Federal court by habeas corpus and of granting said writ, shall be served on the attorney-general or other officer prosecuting the pleas of said State, and due proof of such service shall be made to the court, or justice, or judge before the hearing.

Appeals in cases of habeas corpus to circuit court.
Aug. 29, 1842, c. 257, v. 5, p. 539; Feb. 5, 1867, c. 28, s. 1, v. 14, p. 385; Mar. 27, 1868, c. 34, s. 2, v. 15, p. 44.
Sec. 763, R. S.

358. From the final decision of any court, justice, or judge inferior to the circuit court, upon an application for a writ of habeas corpus or upon such writ when issued, an appeal may be taken to the circuit court for the district in which the cause is heard:

1. In the case of any person alleged to be restrained of his liberty in violation of the Constitution, or of any law or treaty of the United States.

2. In the case of any prisoner who, being a subject or citizen of a foreign State, and domiciled therein, is committed or confined, or in custody by or under the authority or law of the United States, or of any State, or process

---

discharged, he can not afterwards be tried by the State courts. Cunningham *v.* Neagle, 135 U. S., 1. See, also, In re Boardman, 169 U. S., 39; Baker *v.* Grice, ibid., 284; Nishimura Ekin *v.* U. S., 142 ibid., 651, 166 U. S., 391; Iasigi *v.* Van de Curr, 166 U. S., 391.

Conflict of State and Federal authority.—The writ of habeas corpus is a high prerogative writ known to the common law, the great object of which is the liberation of those who may be imprisoned without sufficient cause. It is in the nature of a writ of error to examine the legality of the commitment. Ex parte Watkins, 3 Pet., 202. The Federal courts by whom, and the cases in which, it may be issued are described in sections 751, 752, 753, 754, 762, 763, 764, and 765 of the Revised Statutes. Subject to the paramount authority of the National Government, by its own tribunals, to inquire into the legality of custody of prisoners held by the United States courts or officers, the States may inquire into the grounds on which any person in their respective limits is restrained of his liberty. Robb *v.* Connolly, 111 U. S., 624. A State court has no jurisdiction by habeas corpus to release a prisoner held by order of Federal court. Ableman *v.* Booth, 21 How., 506. And a judicial officer of a State can not, by means of a writ of habeas corpus, take and discharge a person held by or under color of authority of the United States. If it appear upon the return to a writ of habeas corpus that the person is detained under color of the authority of the United States, the State court has no further jurisdiction. Tarble's case, 13 Wall., 397. We do not question the authority of the State court or judge who is authorized by the laws of the State to issue the writ of habeas corpus to issue it in any case where the party is imprisoned within its territorial limits, provided it does not appear, when the application is made, that the person imprisoned is in custody under the authority of the United States. The court or judge has a right to inquire, in this mode of proceeding, for what cause and by what authority the prisoner is confined within the territorial limits of the State sovereignty. And it is the duty of the marshal or other person having the custody of the prisoner to make known to the judge or court, by a proper return, the authority by which he holds him in custody. * * * But after the return is made and the State judge or court judicially apprised that the party is in custody under the authority of the United States, they can proceed no further. * * * And although, as we have said, it is the duty of the marshal or other person holding him to make known, by a proper return, the authority under which he detains him, it is at the same time imperatively his duty to obey the process of the United States, to hold the prisoner in custody under it, and to refuse obedience to the mandate or process of any other Government. And consequently it is his duty not to take the prisoner, nor suffer him to be taken, before a State judge or court upon a habeas corpus issued under State authority. No State judge or court, after they are judicially informed that the party is imprisoned under the authority of the United States, has any right to interfere with him, or to require him to be brought before them. And if the authority of a State, in the form of a judicial process or otherwise, should attempt to control the marshal or other authorized officer or agent of the United States, in any respect in the custody of his prisoner, it would be his duty to resist it and to call to his aid any force that might be necessary to founded thereon, for or on account of any act done or omitted under any alleged right, title, authority, privilege, protection, or exemption, set up or claimed under the commission, order, or sanction of any foreign State or sovereignty, the validity and effect whereof depend upon the law of nations, or under color thereof.[1]

Appeal to Supreme Court.
Aug. 29, 1842; 257, v. 5, p. 539;
Sec. 764, R. S.

359. From the final decision of such circuit court an appeal may be taken to the Supreme Court in the cases described in the preceding section. Mar. 3, 1885, v. 23, p. 437.

Appeals, how taken.
Aug. 29, 1842, c. 257, v. 5, p. 539;
Feb. 5, 1867, c. 28, s. 1, v. 14, p. 385.
Sec. 765, R. S.

360. The appeals allowed by the two preceding sections shall be taken on such terms, and under such regulations and orders, as well for the custody and appearance of the person alleged to be in prison or confined or restrained of his liberty, as for sending up to the appellate tribunal a transcript of the petition, writ of habeas corpus, return thereto, and other proceedings, as may be prescribed by the Supreme Court, or, in default thereof, by the court or judge hearing the cause.[2]

---

maintain the authority of law against illegal interference. No judicial process, whatever form it may assume, can have any lawful authority outside of the limits of the jurisdiction of the court or judge by whom it was issued, and an attempt to enforce it beyond these boundaries is nothing less than lawless violence. Ableman *v.* Booth, 21 How., 506. A State judge has no jurisdiction to issue a writ of habeas corpus for a prisoner in custody of an officer of the United States if the fact of such custody is known to him before issuing the writ; and if such fact appears on the return to the writ, all further proceedings by him are void. And if the United States officer resist the enforcement of the State writ and is imprisoned therefor, he will be discharged by the Federal court. Ex parte Sifford, 5 Am. Law Reg., O. S., 659. A military officer of the United States is not bound to produce the body of an enlisted soldier in answer to a writ of habeas corpus issued from a State court or judge. In re Neill, 8 Blatch., 166. The return of a military officer to a writ of habeas corpus need not be on oath. In re Neill, 8 Blatch., 165. The validity of the enlistment of a soldier can not be inquired into by a State court by the issue of a writ of habeas corpus, and an officer of the Army may properly refuse to discharge an enlisted man in his command upon the order of a State court. In re Farrand, 1 Abbot, 140, 147.

An officer or agent of the United States engaged in the performance of a duty arising under the laws and authority of the United States, is not liable to a criminal prosecution in the courts of a State for acts done by him in his official capacity. (In re Waite, 81 Fed. Rep., 359.) An officer who, in the performance of what he conceives to be his official duty, transcends his authority and invades private rights, is answerable therefor to the Government under which he acts, and to individuals injured by his action; but where there is no criminal intent he is not liable to answer the criminal process of another Government. In re Lewis, 83 ibid., 159; in re Neagle, 135 U. S., 1. Federal courts have authority in habeas corpus proceedings to inquire into the guilt or innocence of persons committed on preliminary examination by a State tribunal on a criminal charge for acts done in the service of the United States, so far as to determine whether the acts were done wantonly and with a criminal intent. Ibid., 159. When an officer of the United States is sought to be held in a State court for punishment for acts done in the performance of his duty to the United States, it is not a sufficient reason for refusing his release upon habeas corpus that he may raise the question of his immunity in the State court, and carry the matter by writ of error to the United States Supreme Court, if necessary, since the operations of the Federal Government would, in the meantime, be obstructed by the confinement of its officer. In re Waite, 81 Fed. Rep., 359.

[1] Ex parte McCardle, 6 Wallace, 318; ibid., 7 Wallace, 506; ex parte Yerger, 8, ibid., 85.

[2] For the appellate jurisdiction of the circuit court of appeals in habeas corpus cases, see section 6 of the act of March 3, 1891. (26 Stat. L., 826).

Pending proceedings in certain cases, action by State authority void.
Aug. 29, 1842, c. 257, v. 5, p. 539; Feb. 5, 1867, c. 28, s. 1, v. 14, p. 385; Mar. 3, 1893, v. 27, p. 551.
Sec. 766, R. S.

361. Pending the proceedings or appeal in the cases mentioned in the three preceding sections, and until final judgment therein, and after final judgment of discharge, any proceeding against the person so imprisoned or confined or restrained of his liberty, in any State court, or by or under the authority of any State, for any matter so heard and determined, or in process of being heard and determined, under such writ of habeas corpus, shall be deemed null and void. That no appeal shall be had or allowed after six months from the date of the judgment or order complained of. *Act of March 3, 1893* (*27 Stat. L., 751*).

SUSPENSION OF THE PRIVILEGE OF THE WRIT OF HABEAS CORPUS.

The privilege[1] of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.[2]

---

[1] The *privilege* of the writ must here mean the right to the writ. Paschal, 141. The power to issue the writ is not the privilege; to ask for it is. Ibid.

[2] It would seem, as the power is given to Congress to suspend the privilege of the writ in cases of rebellion or invasion, that the right to judge whether the exigency had arisen must exclusively belong to that body. Martin *v.* Mott, 12 Wheat., 19; Ex parte Milligan, 4 Wall., 2; VIII Opin. Att. Gen., 365. The privilege of the writ was suspended by the act of March 12, 1863 (12 Stat. L., 755), which contained the following requirement: "During the present rebellion the President of the United States whenever, in his judgment the public safety may require it, is authorized to suspend the writ of habeas corpus, in any case, throughout the United States or any part thereof." Ex parte Milligan, 4 Wall., 2, 115–116; Vallandigham's trial, 259. On September 15, 1863, the President, by proclamation, suspended the privilege of the writ during the rebellion, throughout the United States, in all cases "when, by the authority of the President of the United States, the military, naval, and civil officers of the United States, or any of them, held persons under their command or in their custody, either as prisoners of war, spies, or aiders or abettors of the enemy, or officers, soldiers, or seamen, enrolled, drafted, or mustered or enlisted in or belonging to the land or naval forces of the United States, or as deserters therefrom, or otherwise amenable to military law, or the Rules and Articles of War, or the rules or regulations prescribed for the military or naval service by authority of the President of the United States, or for resisting a draft, or for any other offense against the military or naval service." See, also, United States *v.* Hamilton, 3 Dall., 17; Hepburn et al. *v.* Ellzey, 2 Cr., 445; Ex parte Bollman and Swartwout, 4 Cr., 75; Ex parte Kearney, 7 Wh., 38; Ex parte Tobias Watkins, 3 Pet., 192; Ex parte Milburn, 9 Pet., 704; Holmes *v.* Jennison et al., 14 Pet., 540; Ex parte Dorr, 3 How., 103; Luther *v.* Borden, 7 How., 1; Ableman *v.* Booth and United States *v.* Booth, 21 How., 506; Ex parte Vallandigham, 1 Wall., 243; Ex parte Milligan, 4 Wall., 2; Ex parte McCardle, 7 Wall., 506: Ex parte Yerger, 8 Wall., 85; Tarble's case, 13 Wall., 397; Ex parte Lange, 18 Wall., 163; Ex parte Parks, 93 U. S., 18; Ex parte Karstendick, 93 U. S., 396.

THE COURT OF CLAIMS.[1]

JURISDICTION, POWERS, AND PROCEDURE.

Par.
362. Jurisdiction.
363. Private claims in Congress, when transmitted to Court of Claims.
364. Judgments for set-off or counterclaim, how enforced.
365. Decree on account of paymasters, etc.
366. Claims referred by Departments.
367. Procedure in cases transmitted by Departments.
368. Judgments in cases transmitted by Departments, how paid.
369. Claims growing out of treaties not cognizable therein.
370. Claims pending in other courts not to be prosecuted in Court of Claims.
371. Aliens.
372. Limitation.
373. Rules of practice; contempts.
374. Oaths and acknowledgments.
375. Petition.
376. Petition dismissed if issue found against claimant as to allegiance, etc.
377. Burden of proof and evidence as to loyalty.

Par.
378. Commissioner to take testimony.
379. Power to call upon Departments for information.
380. Testimony not to be taken, when.
381. Witnesses not excluded on account of color.
382. Examination of claimant.
383. Testimony taken where deponent resides.
384. Witnesses, how compelled to attend before commissioners.
385. Cross-examination.
386. Witnesses, how sworn.
387. Fees of commissioner, by whom paid.
388. Claims forfeited for fraud.
389. New trial on motion of claimant.
390. New trial on motion of United States.
391. Payment of judgments.
392. Interest.
393. Interest on claims.
394. Payment of judgment a full discharge, etc.
395. Final judgments a bar.
396–402. The Bowman Act.
403–417. The Tucker Act.

Jurisdiction.

362. The Court of Claims shall have jurisdiction to hear and determine the following matters:

Claims founded on statutes or contracts, or referred by Congress.

First. All claims founded upon any law of Congress,[2] or upon any regulation of an Executive Department,[3] or upon

---

[1] The Court of Claims was established by the acts of February 24, 1855 (10 Stat. L., 612); March 3, 1863 (12 Stat. L., 765), and May 8, 1872 (17 Stat. L., 85). This court was created with a view to give legal redress to the citizen as against the Government where he would have had legal redress as against another citizen. It is a curious fact, not generally known, that the example of Prussia and the German States in guarding the private rights of persons by subjecting the Government, in matters of account, to the judicial power of ordinary courts of justice, led to the establishment of the Court of Claims. Brown *v.* U. S., 5 Ct. Cls., 571, 577. The provisions of the act of March 3, 1863, authorizing the Court of Claims to hear and determine, without a jury, claims against Government with set-offs, is not unconstitutional. McElrath *v.* U. S., 102 U. S., 426.

[2] A claimant presenting a claim founded upon a law of Congress has a legal right, under section 1059, Revised Statutes, to a definitive adjudication; and the power of the court to afford that can not be considered as interfered with by anything short of a lodgment of the power of definitive adjudication in some other tribunal or officer. Thomas *v.* U. S., 16 Ct. Cls., 522. The rejection of a claim by the accounting officers leaves the party to pursue his remedy at law, viz, an action in this court, though he may have accepted the portion allowed. Longwill *v.* U. S., 17 Ct. Cls., 288; U. S. *v.* Kauffman, 96 U. S., 567.

[3] Regulations of an Executive Department are rules relating to the subjects on which a Department acts and are made by its head under an act of Congress con-

Feb. 24, 1855, c. 122, s. 1, v. 10, p. 612; June 22, 1874, c. 393, s. 2, v. 18, p. 192; Mar. 3, 1875, c. 149, v. 18, p. 481. any contract, expressed or implied,[3] with the Government of the United States, and all claims which may be referred to it by either House of Congress.

---

ferring that power and thereby giving such regulations the force of law. A mere order of the President or of a Secretary is not a regulation. Harvey *v.* U. S., 3 Ct. Cls., 38. By the term "any regulation" is doubtless intended any regulation within the lawful discretion of the head of an Executive Department. * * * When Congress permits regulations to be formulated and published and carried into effect year after year, the legislative ratification must be implied. Maddox *v.* U. S., 20 Ct. Cls., 193, 198.

[3] The jurisdiction of the Court of Claims is confined to suits arising from contracts express or implied. Langford *v.* U. S., 101 U. S., 341. The United States can not be sued in the Court of Claims on equitable considerations merely. Bonner *v.* U. S., 9 Wall., 156. The language of the statutes which confer jurisdiction on the Court of Claims excludes, by the strongest implication, demands against the Government founded on torts. In such cases, where it is proper for the nation to furnish a remedy, Congress has wisely reserved the matter for its own determination. Gibbons *v.* U. S., 8 Wall., 269, 275; Reed *v.* U. S., 11 Wall., 591; Langford *v.* U. S., 101 U. S., 341. See, also, paragraphs 339–353, *post.*

CONTRACTS.

The Court of Claims, in the construction and enforcement of contracts, is bound to apply the principles which govern like contracts between individuals. U. S. *v.* Smoot, 15 Wall., 36; Curtis *v.* U. S., 2 Ct. Cls., 144; Brooke *v.* U. S., ibid., 180. All questions of salary are questions of contract, and whether the salary is fixed by law, or by order of a Department under authority of law, the Government contracts to pay the officer his salary, and, failing to do so, a suit therefor may be maintained in this court, whether the case arises under a revenue act or any other. Patton *v.* U. S., 7 Ct. Cls., 362. The United States can no more discharge its contracts by such performance than can an individual person do so. Congress may fail to appropriate, in whole or in part, the money required for payment of a public creditor, and thus leave the public officer without authority to draw money from the Treasury for that purpose, but the indebtedness and liability remain in force. Mitchell *v.* U. S., 18 Ct. Cls., 281, 287; Graham *v.* U. S., 1 ibid., 380; Collins *v.* U. S., 15 ibid., 22; French *v.* U. S., 16 ibid., 419. An officer who has been wholly retired from the service, but in whose case the order of retirement has been revoked by the President, who directs his name to be placed on the retired list, is an officer de facto, and though illegally on such retired list, money paid him by way of salary, so long as he holds the office in good faith, can not be recovered back. When one claiming to be an officer renders no service and holds no official relations with the Government, money paid him for service may be recovered back. Miller *v.* U. S., 19 Ct. Cls., 338. In an action in the Court of Claims to recover a balance claimed to be due on pay account, the United States can set up, as a counter claim, an alleged overpayment to him on account of pay, and can have judgment for its collection. U. S. *v.* Burchard, 125 U. S., 176; McElrath *v.* U. S., 102 U. S., 426.

An officer can only bind the Government by acts which come within a just exercise of his official power. Hunter *v.* U. S., 5 Pet., 173, 178; The Floyd Acceptances, 7 Wall., 666; Whiteside *v.* U. S., 93 U. S., 247. Unless the Government has ratified a contract of an officer in excess of his authority, or received the benefit of it, it is not liable. The ratification of some of a series of unauthorized acts is not to be construed to be an approval of any not specified. Pitcher *v.* U. S., 1 Ct. Cls., 7; De Celis *v.* U. S., 13 Ct. Cls., 117.

IMPLIED CONTRACTS.

To constitute an implied contract "there must have been some consideration moving to the United States; or they must have received the money, charged with a duty to pay it over; or the claimant must have had a lawful right to it when it was received, as in the case of money paid by mistake. Knote *v.* U. S., 95 U. S., 149, 156. A contract to reimburse is implied when the Government takes private property for public use. Such a taking of private property by the Government when the emergency of the public service in time of war, or impending public danger, is too urgent to admit of delay, is everywhere regarded as justified, if the necessity for the use of the property is imperative and immediate and the danger, as heretofore described, Second. All set-offs,[1] counterclaims, claims for damages, whether liquidated or unliquidated, or other demands whatsoever, on the part of the Government of the United States against any person making claim against the Government in said court.

Set-offs and counterclaims of United States.

Mar. 3, 1863, c. 92, s. 3, v. 12, p. 765.
Sec. 1059, R.S.

Third. The claim of any paymaster, quartermaster, commissary of subsistence, or other disbursing officer of the United States, or of his administrators or executors, for relief from responsibility on account of capture or otherwise, while in the line of his duty, of Government funds, vouchers, records, or papers in his charge, and for which such officer was and is held responsible.[2]

Disbursing officers.

May 9, 1866, v. 14, p. 44.

---

is impending; and it is equally clear that the taking of such property, under such circumstances, creates an obligation on the part of the Government to reimburse the owner to the full value of the service. Private rights, under such extreme and imperious circumstances, must give way, for the time, to the public good, but the Government must make full restitution for the sacrifice. U. S. *v.* Russell, 13 Wall., 623, 629. Beneficial volunteer service does not raise an implied contract, unless there has been an inducement, agreement, or ratification. Boston *v.* The District of Columbia, 19 Ct. Cls., 31. The court has jurisdiction of a suit by a patentee for the royalty agreed to be paid for the use of his invention by an authorized officer of the Government. Burns *v.* U. S., 12 Wall., 246.

A contract is implied from the fact that the Government manufactured a patented military device, without market value, on the solicitation of the patentee, that it should pay for the right to use the invention. Palmer *v.* U. S., 128 U. S., 262. The United States may be sued for use of a patented invention by its officers for its benefit if the right of the patentee is acknowledged. Hollister *v.* Benedict Manufacturing Co., 113 U. S., 59; U. S. *v.* Burns, 12 Wall., 246. When an officer of the Government is properly assigned to the work of devising something to be used in the public service, the Government meeting the expenses and paying the officer his usual salary, the Government is not liable for royalty on the invention, though it was made by the officer previous to the time he was assigned to the work, if the labor and expense of perfecting it was borne by the Government. Solomons *v.* U. S., 22 Ct. Cls., 335; 21 ibid., 479. The policy of the War Department of late years toward inventors has been one of neutrality, neither denying nor admitting legal rights, but taking inventions to perfect the Government arms, leaving inventors free to seek redress without prejudice before other tribunals than an Executive Department. Berdan *v.* U. S., 26 Ct. Cls., 48, 60. See, also, Clyde *v.* U. S., 13 Wall., 38; U. S. *v.* Russell, 13 Wall., 623; U. S. *v.* Bostwick, 94 U. S., 53; Fichera's case, 9 Ct. Cls., 254; Macauley's case, 11 Ct. Cls., 693; Clark's case, 11 Ct. Cls., 698; Roman et al. *v.* U. S., 11 Ct. Cls., 761; Campbell's case, 13 Ct. Cls., 470.

[1] The right of set-off did not exist at common law, and is everywhere founded upon statutory regulation. Tillou *v.* U. S., 1 Ct. Cls., 454; 2 ibid., 588, and U. S. *v.* Eckford, 6 Wall., 484. State laws in such a case do not constitute the rule of decision, but the question arises, exclusively, under the act of Congress; and no local law nor usage can have any influence in its determination. Ibid.; Reeside *v.* Walker, 11 How., 272, 290.

[2] Under this provision relief has been afforded to a paymaster who was attacked and robbed by highwaymen. Broadhead *v.* U. S., 19 Ct. Cls., 125. To a disbursing officer for loss by the failure of a national bank, which was a designated depository. Hobbs *v.* U. S., 17 ibid., 189. To a disbursing officer for money stolen from a safe. Scott *v.* U. S., 18 ibid., 1; Clark *v.* U. S., 11 ibid., 698; Howell *v.* U. S., 7 ibid., 512. To a quartermaster for money lost from his person, the money being carried in the way such officers usually carry it on similar occasions, under circumstances utterly free from suspicion and after diligent efforts had been made to recover the same. Whittlesey *v.* U. S., 5 ibid., 452. To a quartermaster for money stolen from his room, due precaution for its safety having been taken. Malone *v.* U. S., 5 ibid., 486; Norton *v.* U. S., 2 ibid., 523. To a paymaster for money contained in a treasure box stolen by soldiers at a garrison. Glenn *v.* U. S., 4 ibid., 501. To an engineer officer for money captured by the enemy. Prince *v.* U. S., 3 ibid., 209. To a paymaster for funds and vouchers captured by the enemy. Ruggles *v.* U. S., 2 ibid., 520; Moore *v.* U. S., ibid.,

Claims for captured and abandoned property. Mar. 12, 1863, c. 120, s. 3, v. 12, p. 820; July 2, 1864, c. 225, ss. 2, 3, v. 13, pp. 375, 376; July 27, 1868, c. 276, s. 3, v. 15, p. 243.

Fourth. Of all claims for the proceeds of captured or abandoned property, as provided by the act of March 12, eighteen hundred and sixty-three, chapter one hundred and twenty, entitled "An act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States," or by the act of July two, eighteen hundred and sixty-four, chapter two hundred and twenty-five, being an act in addition thereto: *Provided*, That the remedy given in cases of seizure under the said acts, by preferring claim in the Court of Claims, shall be exclusive, precluding the owner of any property taken by agents of the Treasury Department as abandoned or captured property in virtue or under color of said acts from suit at common law, or any other mode of redress whatever, before any court other than said Court of Claims.[1]

Private claims in Congress, when transmitted to Court of Claims. Mar. 3, 1863, c. 92, s. 2, v. 12, p. 765. Sec. 1060, R. S.

363. All petitions and bills praying or providing for the satisfaction of private claims against the Government, founded upon any law of Congress, or upon any regulation of an Executive Department, or upon any contract, expressed or implied, with the Government of the United States, shall, unless otherwise ordered by resolution of the House in which they are introduced, be transmitted by the Secretary of the Senate or the Clerk of the House of Representatives, with all the accompanying documents, to the Court of Claims.

Judgments for set-off or counterclaim, how enforced.

364. Upon the trial of any cause in which any set-off, counterclaim, claim for damages, or other demand is set

---

522; Beckwith *v.* U. S., ibid., 526; Hubbell *v.* U. S., ibid., 527. To an acting commissary of subsistence for money expended, the expenditures being covered by vouchers captured by the enemy. Murphy *v.* U. S., 3 ibid., 212.

Relief has been denied to a paymaster for money embezzled by a clerk, the loss having been made good by the disbursing officer, under pressure, but without protest on his part. Hall *v.* U. S., 9 Ct. Cls., 270. In the case of a paymaster for funds stolen by an orderly detailed for messenger duty in his office. Holman *v.* U. S., 11 ibid., 642. To a collector of revenue, for the value of revenue stamps stolen from his office, during his absence therefrom, said collector not being a disbursing officer within the meaning of the statute. Stapp *v.* U. S., 4 ibid., 219. To an acting commissary of subsistence in Dakota, for money alleged to have been stolen, no testimony having been offered in the case but his own. Pattee *v.* U. S., 3 ibid., 397. In a case arising under this provision, the petitioner is a competent witness to prove the amount of money lost, if the loss itself be established by other testimony. U. S. *v.* Clark, 96 U. S., 37; Hobbs *v.* U. S., 17 Ct. Cls., 189; Scott *v.* U. S., 18 ibid., 1; Broadhead *v.* U. S., 19 ibid., 125; Hoyle *v.* U. S., 21 ibid., 300. An acting commissary of subsistence is entitled to relief under the provisions of this statute, and it is not necessary that the officer should have given a bond to entitle him to relief. Wood *v.* U. S., 25 ibid., 98. It was held by the Supreme Court in U. S. *v.* Smith (14 Ct. Cls., 114, and 105 U. S., 620) that the statute of limitation applied to cases arising under this section. See also U. S. *v.* Clark, 96 U. S., 37.

[1] U. S. *v.* Anderson, 9 Wall., 56; Pugh *v.* U. S., 13 Wall., 633; U. S. *v.* Kimball, 13 Wall., 636; U. S. *v.* Crussell, 14 Wall., 1; Slawson *v.* U. S., 16 Wall., 310.

Mar. 3, 1863, c. 92, s. 3, v. 12, p. 765.
Sec. 1061, R. S.

up on the part of the Government against any person making claim against the Government in said court, the court shall hear and determine such claim or demand both for and against the Government and claimant; and if upon the whole case it finds that the claimant is indebted to the Government, it shall render judgment to that effect, and such judgment shall be final, with the right of appeal, as in other cases provided for by law. Any transcript of such judgment, filed in the clerk's office of any district or circuit court, shall be entered upon the records thereof, and shall thereby become and be a judgment of such court and be enforced as other judgments in such courts are enforced.[1]

Decree on accounts of paymasters, etc.
May 9, 1866, c. 75, s. 2, v. 14, p. 44.
Sec. 1062, R. S.

365. Whenever the Court of Claims ascertains the facts of any loss by any paymaster, quartermaster, commissary of subsistence, or other disbursing officer, in the cases hereinbefore provided, to have been without fault or negligence on the part of such officer, it shall make a decree setting forth the amount thereof, and upon such decree the proper accounting officers of the Treasury shall allow to such officer the amount so decreed, as a credit in the settlement of his accounts.

Claims referred by Departments.
June 25, 1868, c. 71, s. 7, v. 15, p. 76.
Sec. 1063, R. S.

366. Whenever any claim is made against any Executive Department, involving disputed facts or controverted questions of law, where the amount in controversy exceeds three thousand dollars, or where the decision will affect a class of cases, or furnish a precedent for the future action of any Executive Department in the adjustment of a class of cases, without regard to the amount involved in the particular case, or where any authority, right, privilege, or exemption is claimed or denied under the Constitution of the United States, the head of such Department may cause such claim, with all the vouchers, papers, proofs, and documents pertaining thereto, to be transmitted to the Court of Claims, and the same shall be there proceeded in as if originally commenced by the voluntary action of the claimant; and the Secretary of the Treasury may, upon the certificate of any Auditor or Comptroller of the Treasury, direct any account, matter, or claim, of the character, amount, or class described in this section, to be transmitted, with all the vouchers, papers, documents, and proofs pertaining thereto, to the said court, for trial and adjudication: *Provided*, That no case shall be referred by any head of a Department unless it belongs to one of the several classes of cases which, by reason of the subject-matter and character, the said court might, under existing laws, take jurisdiction of on such voluntary action of the claimant.

---

[1] Allen *v.* U. S., 17 Wall., 207.

Procedure in cases transmitted by Departments.
June 25, 1868, c. 71, s. 7, v. 15, p. 76.
Sec. 1064, R. S.

367. All cases transmitted by the head of any Department, or upon the certificate of any Auditor or Comptroller, according to the provisions of the preceding section, shall be proceeded in as other cases pending in the Court of Claims, and shall, in all respects, be subject to the same rules and regulations.[1]

Judgments in cases transmitted by Departments, how paid.
June 25, 1868, c. 71, s. 7, v. 15, p. 76.
Sec. 1065, R. S.

368. The amount of any final judgment or decree rendered in favor of the claimant, in any case transmitted to the Court of Claims under the two preceding sections, shall be paid out of any specific appropriation applicable to the case, if any such there be; and where no such appropriation exists, the judgment or decree shall be paid in the same manner as other judgments of the said court.

Claims growing out of treaties not cognizable therein.
Mar. 3, 1863, c. 92, s. 9, v. 12, p. 767.
Sec. 1066, R. S.

369. The jurisdiction of the said court shall not extend to any claim against the Government not pending therein on December one, eighteen hundred and sixty-two, growing out of or dependent on any treaty stipulation entered into with foreign nations or with the Indian tribes.

Claims pending in other courts not to be prosecuted in Court of Claims.
June 25, 1868, c. 71, s. 8, v. 15, p. 77.
Sec. 1067, R. S.

370. No person shall file or prosecute in the Court of Claims, or in the Supreme Court on appeal therefrom, any claim for or in respect to which he or any assignee of his has pending in any other court any suit or process against any person who, at the time when the cause of action alleged in such suit or process arose, was, in respect thereto, acting or professing to act, mediately or immediately, under the authority of the United States.

Aliens.
July 27, 1868, c. 276, s. 2, v. 15, p. 243.
Sec. 1068, R. S.

371. Aliens, who are citizens or subjects of any Government which accords to citizens of the United States the right to prosecute claims against such Government in its courts, shall have the privilege of prosecuting claims against the United States in the Court of Claims, whereof such court, by reason of their subject-matter and character, might take jurisdiction.[2]

Limitation.
Mar. 3, 1863, c. 92, s. 10, v. 12, p. 767.
Sec. 1069, R. S.

372. Every claim against the United States, cognizable by the Court of Claims, shall be forever barred unless the petition setting forth a statement thereof is filed in the court, or transmitted to it by the Secretary of the Senate or the Clerk of the House of Representatives as provided by law, within six years after the claim first accrues: *Provided*, That the claims of married women first accrued during marriage, of persons under the age of twenty-one years first accrued during minority, and of idiots, lunatics, insane persons, and persons beyond the seas at the time the claim accrued, entitled to the claim, shall not be barred if the petition be filed in the court or transmitted, as aforesaid, within three years after the disability has ceased; but no other disability than those enumerated shall prevent any claim from being barred, nor shall any of the said disabilities operate cumulatively.

---

[1] Clyde *v.* U. S., 13 Wall., 38.

[2] U. S. *v.* O'Keefe, 11 Wall., 178; Carlisle *v.* U. S., 16 Wall., 147.

373. The said court shall have power to establish rules for its government and for the regulation of practice therein, and it may punish for contempt in the manner prescribed by the common law, may appoint commissioners, and may exercise such powers as are necessary to carry into effect the powers granted to it by law.

Rules of practice; contempts.
Feb. 24, 1855, c. 122, s. 3, v. 10, p. 613; Mar. 3, 1863, c. 92, s. 4, v. 12, p. 765.
Sec. 1070, R. S.

374. The judges and clerks of said court may administer oaths and affirmations, take acknowledgments of instruments in writing, and give certificates of the same.

Oaths and acknowledgments.
Mar. 3, 1863, c. 92, s. 4, v. 12, p. 765.
Sec. 1071, R. S.

375. The claimant shall, in all cases, fully set forth in his petition the claim, the action thereon in Congress, or by any of the Departments, if such action has been had; what persons are owners thereof or interested therein, when and upon what consideration such persons became so interested; that no assignment or transfer of said claim, or of any part thereof or interest therein, has been made, except as stated in the petition; that said claimant is justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets; that the claimant, and, where the claim has been assigned, the original and every prior owner thereof, if a citizen, has at all times borne true allegiance to the Government of the United States, and, whether a citizen or not, has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, and that he believes the facts as stated in the said petition to be true. And the said petition shall be verified by the affidavit of the claimant, his agent, or attorney.[1]

Petition.
Feb. 24, 1855, c. 122, s. 1, v. 10, p. 612; Mar. 3, 1863, c. 92, s. 12, v. 12, p. 767.
Sec. 1072, R.S.

376. The said allegations as to true allegiance and voluntary aiding, abetting, or giving encouragement to rebellion against the Government may be traversed by the Government, and if on the trial such issues shall be decided against the claimant, his petition shall be dismissed.

Petition dismissed if issue found against claimant as to allegiance, etc.
Mar. 3, 1863, c. 92, s. 12, v. 12, p. 767.
Sec. 1073, R.S.

---

[1] U. S. *v.* Insurance Companies, 22 Wall., 99.

Burden of proof and evidence as to loyalty.
June 25, 1868, c. 71, s. 3, v. 15, p. 75.
Sec. 1074, R. S.

377. Whenever it is material in any claim to ascertain whether any person did or did not give any aid or comfort to the late rebellion, the claimant asserting the loyalty of any such person to the United States during such rebellion shall be required to prove affirmatively that such person did, during said rebellion, consistently adhere to the United States, and did give no aid or comfort to persons engaged in said rebellion; and the voluntary residence of any such person in any place where, at any time during such residence, the rebel force or organization held sway, shall be prima facie evidence that such person did give aid and comfort to said rebellion and to the persons engaged therein.

Commissioners to take testimony.
Feb. 24, 1855, c. 122, s. 3, v. 10, p. 613; Mar. 3, 1863, c. 92, s. 4, v. 12, p. 765.
Sec. 1075, R. S.

378. The Court of Claims shall have power to appoint commissioners to take testimony to be used in the investigation of claims which come before it; to prescribe the fees which they shall receive for their services, and to issue commissions for the taking of such testimony, whether taken at the instance of the claimant or of the United States.

Power to call upon Departments for information.
Feb. 24, 1855, c. 122, s. 11, v. 10, p. 614.
Sec. 1076, R. S.

379. The said court shall have power to call upon any of the Departments for any information or papers it may deem necessary, and shall have the use of all recorded and printed reports made by the committees of each House of Congress, when deemed necessary in the prosecution of its business. But the head of any Department may refuse and omit to comply with any call for information or papers when, in his opinion, such compliance would be injurious to the public interest.

Testimony not to be taken, when.
Feb. 24, 1855, c. 122, s. 4, v. 10, p. 613.
Sec. 1077, R. S.

380. When it appears to the court in any case that the facts set forth in the petition of the claimant do not furnish any ground for relief, it shall not be the duty of the court to authorize the taking of any testimony therein.

Witnesses not excluded on account of color.

381. No witness shall be excluded in any suit in the Court of Claims on account of color.[1]

July 2, 1864, c. 210, s. 3, v. 13, p. 351; Mar. 2, 1867, c. 166, s. 2, v. 14, p. 457; June 25, 1868, c. 71, s. 4, v. 15, p. 75. Sec. 1078, R. S.

Examination of claimant.
Mar. 3, 1863, c. 92, s. 8, v. 12, p. 766; June 25, 1868, c. 71, s. 4, v. 15, p. 75.
Sec. 1080, R. S.

382. The court may, at the instance of the attorney or solicitor appearing in behalf of the United States, make an order in any case pending therein, directing any claimant in such case to appear, upon reasonable notice, before any commissioner of the court, and be examined on oath touching any or all matters pertaining to said claim. Such examination shall be reduced to writing by the said commissioner, and be returned to and filed in the court, and

---

[1] Section 1079, Revised Statutes, repealed by section 8, act of March 3, 1887 (24 Stat. L., 505). See, also, Cornett *v.* Williams, 20 Wall., 226; Wood's Case, 10 Ct. Cls., 395.

may, at the discretion of the attorney or solicitor of the United States appearing in the case, be read and used as evidence on the trial thereof. And if any claimant, after such order is made and due and reasonable notice thereof is given to him, fails to appear, or refuses to testify or answer fully as to all matters within his knowledge material to the issue, the court may, in its discretion, order that the said cause shall not be brought forward for trial until he shall have fully complied with the order of the court in the premises.[2]

Testimony taken where deponent resides.
Feb. 24, 1855, c. 122, s. 3, v. 10, p. 613.
Sec. 1081, R.S.

383. The testimony in cases pending before the Court of Claims shall be taken in the county where the witness resides, when the same can be conveniently done.

Witnesses, how compelled to attend before commissioners.
Feb. 24, 1855, c. 122, s. 3, v. 10, p. 613.
Sec. 1082, R.S.

384. The Court of Claims may issue subpœnas to require the attendance of witnesses in order to be examined before any person commissioned to take testimony therein, and such subpœnas shall have the same force as if issued from a district court, and compliance therewith shall be compelled under such rules and orders as the court shall establish.

Cross-examination.
Feb. 24, 1855, c. 122, s. 5, v. 10, p. 613.
Sec. 1083, R.S.

385. In taking testimony to be used in support of any claim, opportunity shall be given to the United States to file interrogatories, or by attorney to examine witnesses, under such regulations as said court shall prescribe; and like opportunity shall be afforded the claimant, in cases where testimony is taken on behalf of the United States, under like regulations.

Witnesses, how sworn.
Feb. 24, 1855, c. 122, s. 3, v. 10, p. 613.
Sec. 1084, R.S.

386. The commissioner taking testimony to be used in the Court of Claims shall administer an oath or affirmation to the witnesses brought before him for examination.

Fees of commissioner, by whom paid.
Feb. 24, 1855, c. 122, s. 3, v. 10, p. 613.
Sec. 1085, R.S.

387. When testimony is taken for the claimant, the fees of the commissioner before whom it is taken, and the cost of the commission and notice, shall be paid by such claimant; and when it is taken at the instance of the Government, such fees, together with all postage incurred by the Assistant Attorney-General, shall be paid out of the contingent fund provided for the Court of Claims or other appropriation made by Congress for that purpose.

Claims forfeited for fraud.
Mar. 3, 1863, c. 92, s. 11, v. 12, p. 767.
Sec. 1086, R.S.

388. Any person who corruptly practices or attempts to practice any fraud against the United States in the proof, statement, establishment, or allowance of any claim, or of any part of any claim against the United States, shall ipso facto forfeit the same to the Government; and it shall be the duty of the Court of Claims, in such cases, to find specifically that such fraud was practiced or attempted to be practiced, and thereupon to give judgment that such claim is forfeited to the Government, and that the claimant be forever barred from prosecuting the same.

---

[2] Macauley's Case, 11 Ct. Cls., 575.

New trial on motion of claimant.
Feb. 24, 1855, c. 122, s. 9, v. 10, p. 614.
Sec. 1087, R. S.

389. When judgment is rendered against any claimant, the court may grant a new trial for any reason which, by the rules of common law or chancery in suits between individuals, would furnish sufficient ground for granting a new trial.

New trial on motion of United States.
June 25, 1868, c. 71, s. 2, v. 15, p. 75.
Sec. 1088, R. S.

390. The Court of Claims, at any time while any claim is pending before it, or on appeal from it, or within two years next after the final disposition of such claim, may, on motion on behalf of the United States, grant a new trial and stay the payment of any judgment therein, upon such evidence, cumulative or otherwise, as shall satisfy the court that any fraud, wrong, or injustice in the premises has been done to the United States; but until an order is made staying the payment of a judgment, the same shall be payable and paid as now provided by law.[1]

Payment of judgments.
Mar. 3, 1863, c. 92, s. 7, v. 12, p. 766.
Sec. 1089, R. S.

391. In all cases of final judgments by the Court of Claims, or, on appeal, by the Supreme Court, where the same are affirmed in favor of the claimant, the sum due thereby shall be paid out of any general appropriation made by law for the payment and satisfaction of private claims, on presentation to the Secretary of the Treasury of a copy of said judgment, certified by the clerk of the Court of Claims, and signed by the chief justice, or, in his absence, by the presiding judge of said court.

Interest.
Mar. 3, 1863, c. 92, s. 7, v. 12, p. 766.
Sec. 1090, R. S.

392. In cases where the judgment appealed from is in favor of the claimant, and the same is affirmed by the Supreme Court, interest thereon at the rate of five per centum shall be allowed from the date of its presentation to the Secretary of the Treasury for payment as aforesaid, but no interest shall be allowed subsequent to the affirmance, unless presented for payment to the Secretary of the Treasury as aforesaid.

Interest on claims.
Mar. 3, 1863, c. 92, s. 7, v. 12, p. 766.
Sec. 1091, R. S.

393. No interest shall be allowed on any claim up to the time of the rendition of judgment thereon by the Court of Claims, unless upon a contract expressly stipulating for the payment of interest.

Payment of judgment a full discharge, etc.
Mar. 3, 1863, c. 92, s. 7, v. 12, p. 766.
Sec. 1092, R. S.

394. The payment of the amount due by any judgment of the Court of Claims and of any interest thereon allowed by law, as hereinbefore provided, shall be a full discharge to the United States of all claim and demand touching any of the matters involved in the controversy.

---

[1] Ex parte Russell, 13 Wall, 664; Ex parte, in matter of U. S., 16 Wall., 699.

395. Any final judgment against the claimant on any claim prosecuted as provided in this chapter shall forever bar any further claim or demand against the United States arising out of the matters involved in the controversy.

Final judgments a bar.
Mar. 3, 1863, c. 92, s. 7, v. 12, p. 766.
Sec. 1093, R.S.

THE BOWMAN ACT.

396. Whenever a claim or matter is pending before any committee of the Senate or House of Representatives, or before either House of Congress, which involves the investigation and determination of facts, the committee or House may cause the same, with the vouchers, papers, proofs, and documents pertaining thereto, to be transmitted to the Court of Claims of the United States, and the same shall there be proceeded in under such rules as the court may adopt. When the facts shall have been found, the court shall not enter judgment thereon, but shall report the same to the committee or to the House by which the case was transmitted for its consideration. *Sec. 1, act of March 3, 1883 (22 Stat. L., 485).*

Claims, etc., pending before Congress involving investigation to be referred to Court of Claims.
Sec. 1, Mar. 3, 1883, v. 22, p. 485.

397. That when a claim or matter is pending in any of the Executive Departments which may involve controverted questions of fact or law, the head of such Department may transmit the same, with the vouchers, papers, proofs, and documents pertaining thereto, to said court, and the same shall be there proceeded in under such rules as the court may adopt. When the facts and conclusions of law shall have been found, the court shall not enter judgment thereon, but shall report its findings and opinions to the Department by which it was transmitted for its guidance and action.[1] *Sec. 2, ibid.*

Certain claims pending in Executive Departments may be transmitted, etc. to Court of Claims.
Sec. 2, *ibid.*

398. The jurisdiction of said court shall not extend to or include any claim against the United States growing out of the destruction or damage to property by the Army or Navy during the war for the suppression of the rebellion, or for the use and occupation of real estate by any part of the military or naval forces of the United States in the operations of said forces during the said war at the seat of war; nor shall the said court have jurisdiction of any claim against the United States which is now barred by virtue of the provisions of any law of the United States. *Sec. 3, ibid.*

Claims not within jurisdiction of court.
Sec. 3, *ibid.*

---

[1] Where claims are referred by the head of an Executive Department, of his own motion, and without the consent of the claimant, the court will take jurisdiction under the Bowman Act. Billings *v.* U. S., 23 Ct. Cls., 166, 175.

Claims for supplies, etc., furnished for suppression of the rebellion.
Sec. 4, *ibid.*

399. In any case of a claim for supplies or stores taken by or furnished to any part of military or naval forces of the United States for their use during the late war for the suppression of the rebellion, the petition shall aver that the person who furnished such supplies or stores, or from whom such supplies or stores were taken, did not give any aid or comfort to said rebellion, but was throughout that war loyal to the Government of the United States, and the fact of such loyalty shall be a jurisdictional fact; and unless the said court shall, on a preliminary inquiry, find that the person who furnished such supplies or stores, or from whom the same were taken as aforesaid, was loyal to the Government of the United States throughout said war, the court shall not have jurisdiction of such cause, and the same shall, without further proceedings, be dismissed. *Sec. 4, ibid.*

Loyalty to be a jurisdictional fact.

Defense, etc., for the United States.
Sec. 5, *ibid.*

400. That the Attorney-General, or his assistants under his direction, shall appear for the defense and protection of the interests of the United States in all cases which may be transmitted to the Court of Claims under this act, with the same power to interpose counterclaims, offsets, defenses for fraud practiced or attempted to be practiced by claimants, and other defenses, in like manner as he is now required to defend the United States in said court. *Sec. 5, ibid.*

Parties in interest may testify, etc.
Sec. 6, *ibid.*

401. That in the trial of such cases no person shall be excluded as a witness because he or she is a party to or interested in the same. *Sec. 6, ibid.*

Reports of Court of Claims may be continued, etc., for action.
Sec. 7, *ibid.*

402. That reports of the Court of Claims to Congress under this act, if not finally acted upon during the session at which they are reported, shall be continued from session to session and from Congress to Congress until the same shall be finally acted upon.[1] *Sec. 7, ibid.*

THE TUCKER ACT.

Suits against the Government.

403. That the Court of Claims shall have jurisdiction to hear and determine the following matters:

Jurisdiction of Court of Claims.
R. S., sec. 1058, p. 195.

First. All claims founded upon the Constitution of the United States[2] or any law of Congress, except for pensions,

---

[1] Paragraphs 332 to 338, inclusive, constitute the Bowman Act (22 Stat. L., 485).

[2] The clause giving the Court of Claims jurisdiction of claims founded upon the Constitution of the United States gives the court jurisdiction over obligations arising out of the occupation or taking of real property. Stovall *v.* U. S., 26 Ct. Cls., 226. A distinction exists between property used for Government purposes and property destroyed for the public safety. If the conditions admitted of it being acquired by contract and used for the benefit of the Government, it may be regarded as acquired

Mar. 3, 1887, v. 24, p. 505.

Proviso.

"War" and rejected claims excepted.

or upon any regulation of an Executive Department, or upon any contract, expressed or implied, with the Government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity, or admiralty if the United States were suable: *Provided, however,* That nothing in this section shall be construed as giving to either of the courts herein mentioned jurisdiction to hear and determine claims growing out of the late civil war, and commonly known as "war claims," or to hear and determine other claims which have heretofore been rejected or reported on adversely by any court, Department, or commission authorized to hear and determine the same.

Set-offs, counter-claims, etc.

Proviso. Limitation.

Ibid. June 27, 1898, v. 30, p. 444; July 1, 1898, s. 3., v. 30, p. 649.

Second. All set-offs, counterclaims, claims for damages, whether liquidated or unliquidated, or other demands whatsoever on the part of the Government of the United States against any claimant against the Government in said court: *Provided,* That no suit against the Government of the United States shall be allowed under this act unless the same shall have been brought within six years after the right accrued for which the claim is made. *Act of March 3, 1887, vol. 24, p. 505. Provided further,* That no suit against the Government of the United States, brought by any officer of the United States to recover fees for services alleged to have been performed for the United States, shall be allowed under this act unless an account for said fees shall have been rendered and finally acted upon according to the provisions of the act of July 31, 1894,[1] unless the proper accounting officer of the Treasury fails to finally act thereon within six months after the account is received in said office. *Act of June 27, 1898 (30 Stat. L., 494); sec. 3, act of July 1, 1898 (30 ibid., 649).*

District and circuit courts to have concurrent jurisdiction with Court of Claims; limit.

Sec. 2, *ibid.*

404. That the district courts of the United States shall have concurrent jurisdiction with the Court of Claims as to all matters named in the preceding section where the amount of the claim does not exceed one thousand dollars, and the circuit courts of the United States shall have such concurrent jurisdiction in all cases where the amount of

---

under an implied contract; but if the taking, using, or occupying was in the nature of destruction for the general welfare, or incident to the ravages of war, and whether brought about by casualty or by authority, and whether on hostile or national territory, the loss (in absence of positive legislation) must be borne by him upon whom it falls. Hafleblower *v.* U. S., 21 Ct. Cls., 228.

[1] 28 Stat. L., 162.

such claim exceeds one thousand dollars and does not exceed ten thousand dollars. All causes brought and tried under the provisions of this act shall be tried by the court without a jury. *Sec. 2, ibid.* The jurisdiction hereby conferred upon the said circuit and district courts shall not extend to cases brought to recover fees, salary, or compensation for official services of officers of the United States or brought for such purpose by persons claiming as such officers or as assignees or legal representatives thereof. *Sec. 2, act of June 27, 1898 (30 Stat. L., 494).*

Limitation. June 27, 1898, s. 2, v. 30, p. 494.

Petitions for release from official bond. Sec. 3, *ibid.*

405. That whenever any person shall present his petition to the Court of Claims alleging that he is or has been indebted to the United States as an officer or agent thereof, or by virtue of any contract therewith, or that he is the guarantor, or surety, or personal representative of any officer, or agent, or contractor so indebted, or that he, or the person for whom he is such surety, guarantor, or personal representative has held any office or agency under the United States, or entered into any contract therewith, under which it may be or has been claimed that an indebtedness to the United States has arisen and exists, and that he or the person he represents has applied to the proper Department of the Government requesting that the account of such office, agency, or indebtedness may be adjusted and settled, and that three years have elapsed from the date of such application and said account still remains unsettled and unadjusted, and that no suit upon the same has been brought by the United States, said court shall, due notice first being given to the head of said Department and to the Attorney-General of the United States, proceed to hear the parties and to ascertain the amount, if any, due the United States on said account. The Attorney-General shall represent the United States at the hearing of said cause. The court may postpone the same from time to time whenever justice shall require. The judgment of said court or of the Supreme Court of the United States, to which an appeal shall lie, as in other cases, as to the amount due, shall be binding and conclusive upon the parties. The payment of such amount so found due by the court shall discharge such obligation. An action shall accrue to the United States against such principal, or surety, or representative to recover the amount so found due, which may be brought at any time within three years after the final judgment of said court. Unless suit shall be brought within said time, such claim and the claim on the

Judgment.

Limitation.

original indebtedness shall be forever barred. *Sec. 3, ibid.*

Jurisdiction and procedure. Sec. 4, *ibid.*

406. That the jurisdiction of the respective courts of the United States proceeding under this act, including the right of exception and appeal, shall be governed by the law now in force, in so far as the same is applicable and not inconsistent with the provisions of this act; and the course of procedure shall be in accordance with the established rules of said respective courts, and of such additions and modifications thereof as said courts may adopt. *Sec. 4, ibid.*

Petition for settlement of claims. Sec. 5, *ibid.*

407. That the plaintiff in any suit brought under the provisions of the second section of this act shall file a petition, duly verified, with the clerk of the respective court having jurisdiction of the case, and in the district where the plaintiff resides. Such petition shall set forth the full name and residence of the plaintiff, the nature of his claim, and a succinct statement of the facts upon which the claim is based, the money or any other thing claimed, or the damages sought to be recovered and praying the court for a judgment or decree upon the facts and law. *Sec. 5, ibid.*

Service. Sec. 6, *ibid.*

408. That the plaintiff shall cause a copy of his petition filed under the preceding section to be served upon the district attorney of the United States in the district wherein suit is brought, and shall mail a copy of the same, by registered letter, to the Attorney-General of the United States, and shall, thereupon cause to be filed with the clerk of the court wherein suit is instituted an affidavit of such service and the mailing of such letter. It shall be the duty of the district attorney upon whom service of petition is made as aforesaid to appear and defend the interests of the Government in the suit, and within sixty days after the service of petition upon him, unless the time should be extended by order of the court made in the case to file a plea, answer, or demurrer on the part of the Government, and to file a notice of any counterclaim, set-off, claim for damages, or other demand or defense whatsoever of the Goverement in the premises: *Provided*, That should the district attorney neglect or refuse to file the plea, answer, demurrer, or defense, as required, the plaintiff may proceed with the case under such rules as the court may adopt in the premises; but the plaintiff shall not have judgment or decree for his claim, or any part thereof, unless he shall establish the same by proof satisfactory to the court. *Sec. 6, ibid.*

Defense.

Proviso. Proceedings on failure of Government to answer.

Opinions. Sec. 7, *ibid.*

409. That it shall be the duty of the court to cause a written opinion to be filed in the cause, setting forth the specific findings by the court of the facts therein and the conclusions of the court upon all questions of law involved in the case, and to render judgment thereon. If the suit be in equity or admiralty, the court shall proceed with the same according to the rules of such courts. *Sec. 7, ibid.*

Interested parties may testify.
Sec. 8, *ibid.*

410. That in the trial of any suit brought under any of the provisions of this act, no person shall be excluded as a witness because he is a party to or interested in said suit; and any plaintiff or party in interest may be examined as a witness on the part of the Government.

Section ten hundred and seventy-nine of the Revised Statutes is hereby repealed. The provisions of section ten hundred and eighty of the Revised Statutes shall apply to cases under this act. *Sec. 8, ibid.*

Appeals and writs of error.
Sec. 9, *ibid.*

411. That the plaintiff or the United States, in any suit brought under the provisions of this act shall have the same rights of appeal or writ of error as are now reserved in the statutes of the United States in that behalf made, and upon the conditions and limitations therein contained.

Procedure.

The modes of procedure in claiming and perfecting an appeal or writ of error shall conform in all respects, and as near as may be, to the statutes and rules of court governing appeals and writs of error in like causes. *Sec. 9, ibid.*

Adverse judgments to United States to be certified to Attorney-General.
Sec. 10, *ibid.*

412. That when the findings of fact and the law applicable thereto have been filed in any case as provided in section six of this act, and the judgment or decree is adverse to the Government, it shall be the duty of the district attorney to transmit to the Attorney-General of the United States certified copies of all the papers filed in the cause, with a transcript of the testimony taken, the written findings of the court, and his written opinion as to the same; whereupon the Attorney-General shall determine and direct

Appeal.

whether an appeal or writ of error shall be taken or not; and when so directed the district attorney shall cause an appeal or writ of error to be perfected in accordance with the terms of the statutes and rules of practice governing

Proviso.
Limitation.

the same: *Provided*, That no appeal or writ of error shall be allowed after six months from the judgment or decree in such suit. From the date of such final judgment or

Interest.

decree interest shall be computed thereon, at the rate of four per centum per annum, until the time when an appropriation is made for the payment of the judgment or decree. *Sec. 10, ibid.*

Report to Congress.
Sec. 11, *ibid.*

413. That the Attorney-General shall report to Congress, and at the beginning of each session of Congress, the suits under this act in which a final judgment or decree has been rendered giving the date of each, and a statement of the costs taxed in each case. *Sec. 11, ibid.*

Claims referred by Departments. Sec. 12, *ibid.*

414. That when any claim or matter may be pending in any of the Executive Departments which involves controverted questions of fact or law, the head of such Department, with the consent of the claimant, may transmit the same, with the vouchers, papers, proofs, and documents pertaining thereto, to said Court of Claims, and the same shall be there proceeded in under such rules as the court may adopt. When the facts and conclusions of law shall have been found, the court shall report its findings to the Department by which it was transmitted.[1] *Sec. 12, ibid.*

Claims referred under Bowman Act. Sec. 13, *ibid.*

415. That in every case which shall come before the Court of Claims, or is now pending therein, under the provisions of an act entitled "An act to afford assistance and relief to Congress and the Executive Departments in the investigation of claims and demands against the Government," approved March third, eighteen hundred and eighty-three, if it shall appear to the satisfaction of the court, upon the facts established, that it has jurisdiction to render judgment or decree thereon under existing laws or under the provisions of this act, it shall proceed to do so, giving to either party such further opportunity for hearing as in its judgment justice shall require, and report its proceedings therein to either House of Congress or to the Department by which the same was referred to said court. *Sec. 13, ibid.*

Judgment.

Reference of claims pending in Congress. Sec. 14, *ibid.*

416. That whenever any bill, except for a pension, shall be pending in either House of Congress providing for the payment of a claim against the United States, legal or equitable, or for a grant, gift, or bounty to any person, the House in which such bill is pending may refer the same to the Court of Claims, who shall proceed with the same in accordance with the provisions of the act approved March third, eighteen hundred and eighty-three, entitled An "act to afford assistance and relief to Congress and the Executive Departments in the investigation of claims and demands against the Government," and report to such House the facts in the case and the amount, where the same can be liquidated, including any facts bearing upon the question whether there has been delay or laches in presenting such claim or applying for such grant, gift, or bounty, and any facts bearing upon the question whether the bar of any statute of limitation should be removed or which shall be claimed to excuse the claimant for not having resorted to any established legal remedy. *Sec. 14, ibid.*

---

[1] See paragraph 333 *supra* (section 3, act of March 3, 1883).

Costs. Sec. 15, *ibid.*

417. If the Government of the United States shall put in issue the right of the plaintiff to recover the court may, in its discretion, allow costs to the prevailing party from the time of joining such issue. Such costs, however, shall include only what is actually incurred for witnesses, and for summoning the same, and fees paid to the clerk of the court.[2] *Sec. 15, ibid.*

---

[2] Vol. 24, Stat. L., pp. 506–508, paragraphs 339 to 353, *supra,* constitute the Tucker Act. The act of March 3, 1891 (20 Stat. L., 851), confers jurisdiction upon this court to adjust certain claims arising from Indian depredations.

CHAPTER VIII.

THE DEPARTMENT OF THE NAVY—THE MARINE CORPS.

THE NAVY DEPARTMENT.

Par.
418. The Navy Department.
419–446. The Marine Corps.
447. Transfers to the Navy.
448. Details of navy officers.
449. Prohibition of punishments on vessels of war.
450. Administration of oaths.

418. There shall be at the seat of government an Executive Department to be known as the Department of the Navy, and a Secretary of the Navy, who shall be the head thereof.[1]

Establishment of the Department of the Navy.
Apr. 30, 1798, v. 1, p. 553.
Sec. 415, R. S.

THE MARINE CORPS.

Par.
419. Composition.
420. Rank of commandant.
421. Restriction on appointments.
422. Vacancies.
423. Age limit—Examination for appointment.
424. Examinations for promotion.
425. Staff.
426. Staff vacancies.
427. Relative rank.
428. Brevets.
429. Pay and allowances.
430. No commutation of forage.
431. Retirement.
432. Credit for volunteer service.
433. Retiring boards, composition.
434. Enlisted men, strength.
435. The Marine Band.
436. Enlistments, to be for five years.
437. Oath of enlistment.
438. Exemption from arrest.
439. Rations at sea.
440. Rations on shore duty.
441. The same.
442. Organization of Marine Corps.
443. Shore duty of the Marine Corps.
444. Regulations.
445. Application of Articles of War.
446. Service on army courts-martial.

419. From and after the date of the approval of this act the active list of the line officers of the United States Marine Corps shall consist of one brigadier-general commandant, five colonels, five lieutenant colonels, ten majors, sixty captains, sixty first lieutenants and sixty second lieutenants. * * * Vacancies in all grades in the line created by this section shall be filled as far as possible by

Composition of Marine Corps.
July 25, 1861, c. 19, s. 1, v. 12, p. 275; Mar. 2, 1867, c. 174, s. 7, v. 14, p. 517; June 6, 1874, v. 18, p. 58; June 30, 1876, v. 19, p. 71; Mar. 3, 1899, s. 18, v. 30, p. 1008.
Sec. 1596, R. S.

---

[1] The office and functions of the Secretary of the Navy were included in those of Secretary of War from August 7, 1789, the date of the establishment of the War Department, until April 30, 1798, when the Department of the Navy was established. Act of April 30, 1798 (1 Stat. L., 553).

promotion by seniority from the line officers on the active list of said Corps: *And provided further*, That the commissions of officers now in the Marine Corps shall not be vacated by this act.[1] *Section 18, act of March 3, 1899 (30 Stat. L., 1008).*

Rank of commandant.
Mar. 2, 1867, c. 174, s. 7, v. 14, p. 517; June 6, 1874, v. 18, p. 58; Mar. 3, 1899, s. 18, v. 30, p. 1008.
Sec. 1601, R.S.

420. The commandant of the Marine Corps shall have the rank and pay of a brigadier-general. Vacancies in the grade of brigadier-general shall be filled by selection from officers on the active list of the Marine Corps not below the grade of field officer.[2] *Section 18, act of March 3, 1899 (30 Stat. L., 1008).*

Restriction on appointments.
Mar. 3, 1899, s. 21, v. 30, p. 1009.

421. Upon the passage of this Act not more than forty-five of the captains, forty-five first lieutenants and forty-five second lieutenants herein provided for shall be appointed; fifteen captains, fifteen first lieutenants and fifteen second lieutenants to be appointed subsequently to January first, nineteen hundred. *Sec. 21, act of March 3, 1899 (30 Stat. L., 1009).*

APPOINTMENTS AND PROMOTIONS.

Vacancies, restriction.
Mar. 3, 1899, s. 19, v. 30, p. 1009.

422. That the vacancies existing in said Corps after the promotions and appointments herein provided for shall be filled by the President from time to time, whenever the actual needs of the naval service require it, first, from the graduates of the Naval Academy in the manner now provided by law; or second, from those who are serving or who have served as second lieutenants in the Marine Corps during the war with Spain; or, third, from meritorious noncommissioned officers of the Marine Corps; or, fourth, from civil life: *Provided*, That after said vacancies are once filled there shall be no further appointments from civil life. *Sec. 19, act of March 3, 1899 (30 Stat. L., 1009).*

Limit of age; examination.
Sec. 20, *ibid.*

423. That no person except such officers or former graduates of the Naval Academy as have served in the war with Spain, as hereinbefore provided for, shall be appointed a commissioned officer in the Marine Corps who is under twenty or over thirty years of age; and that no person shall be appointed a commissioned officer in said Corps until he shall have passed such examination as may be prescribed by the President of the United States, except graduates of the Naval Academy, as above provided. That the officers of the Marine Corps above the grade of captain, except brigadier-general, shall, before being promoted, be subject to such physical, mental and moral examination as is now, or may hereafter be, prescribed by law for other officers of the Marine Corps.[1] *Sec. 20, ibid.*

---

[1] The act of January 30, 1885 (23 Stat. L., 287), contained the requirement that there should be no more appointments, except by way of promotion, in the Marine Corps until the total number of officers therein should be reduced to seventy-five.

[2] By the act of June 6, 1874 (18 Stat. L., 58), the rank of the commandant of the Marine Corps was reduced from brigadier-general to colonel, upon the occurrence of a vacancy in the office of brigadier-general commandant, then authorized by law. A vacancy having occurred on November 1, 1876, a commandant was appointed with the rank of colonel. By section 18 of the act of March 3, 1899 (30 Stat. L., 1008), the rank of brigadier general commandant was restored. The act of June 6, 1874, had contained the requirement that the commandant of the Marine Corps should be selected and appointed from the officers of the Corps.

EXAMINATIONS FOR PROMOTION.

Examinations. July 28, 1892, v 27, p. 321.

424. Hereafter promotions to every grade of commissioned officers in the Marine Corps below the grade of commandant shall be made in the same manner and under the same conditions as now are or may hereafter be prescribed, in pursuance of law, for commissioned officers of the Army: *Provided*, That examining boards which may be organized under the provisions of this act, to determine the fitness of officers of the Marine Corps for promotion, shall, in all cases, consist of not less than five officers, three of whom shall, if practicable, be officers of the Marine Corps, senior to the officer to be examined, and two of whom shall be medical officers of the Navy: *Provided further*, That when not practicable to detail officers of the Marine Corps as members of such examining board, officers of the line of the Navy shall be so detailed.[1] *Act of July 28, 1892* (*27 Stat. L.*, *321*).

STAFF.

Staff. Sec. 22, *ibid.*

425. The staff of the Marine Corps shall consist of one adjutant and inspector, one quartermaster and one paymaster, each with the rank of colonel; one assistant adjutant and inspector, two assistant quartermasters and one assistant paymaster, each with the rank of major; and three assistant quartermasters with the rank of captain. That the vacancies created by this act in the departments of the adjutant and inspector and paymaster shall be filled first by promotion according to seniority of the officers in each of these departments respectively, and then by selection from the line officers on the active list of the Marine Corps not below the grade of captain, and who shall have seen not less than ten years' service in the Marine Corps. That the vacancies created by this act in the quartermaster's department of said corps shall be filled, first by promotion according to seniority of the officers in this department, and then by selection from the line officers on the active list of said corps not below the grade of first lieutenant. *Sec. 22, ibid.*

---

[1] For laws regulating the examination of commissioned officers of the Army for promotion, see the title "*Examinations for Promotion*" in the chapters entitled COMMISSIONED OFFICERS and THE STAFF DEPARTMENTS.

Vacancies. *Ibid.*

426. All vacancies hereafter occurring in the staff of the Marine Corps shall be filled first by promotion according to seniority of the officers in their respective departments, and then by selection from officers of the line on the active list, as hereinbefore provided for. *Ibid.*

RANK, BREVETS.

Relative rank with the Army.

June 30, 1834, c. 132, s. 4, v. 4, p. 713.

Sec. 1603, R.S.

427. The officers of the Marine Corps shall be, in relation to rank, on the same footing as officers of similar grades in the Army.

Brevets.

428. Commissions by brevet may be conferred upon commissioned officers of the Marine Corps in the same cases, upon the same conditions, and in the same manner as are or may be provided by law for officers of the Army.[1]

Apr. 16, 1813, c. 58, s. 3, v. 3, p. 124; Apr. 16, 1818, c. 64, s. 2, v. 3, p. 427; June 30, 1834, c. 132, s. 9, v. 4, p. 713; July 6, 1812, c. 137, s. 4, v. 2, p. 785; Mar. 1, 1869, c. 52, s. 2, v. 15, p. 281; Mar. 3, 1869, c. 124, s. 7, v. 15, p. 318; July 15, 1870, c. 294, s. 16, v. 16, p. 319. **Sec. 1604, R.S.**

PAY, RETIREMENT, ETC.

Pay of Marine Corps.

June 30, 1834, c. 132, s. 5, v. 4, p. 713; Aug. 5, 1854, c. 268, s. 1, v. 10, p. 586.

Sec. 1612, R.S.

429. The officers of the Marine Corps shall be entitled to receive the same pay and allowances, and the enlisted men shall be entitled to receive the same pay and bounty for re-enlisting, as are or may be provided by or in pursuance of law for the officers and enlisted men of like grades in the infantry of the Army.[2]

No commutation of forage.

Jan. 30, 1885, v. 23, p. 287.

430. No commutation for forage shall be paid. *Act of January 30, 1885 (23 Stat. L., 287).*

Retirement of officers.

431. The commissioned officers of the Marine Corps shall be retired in like cases, in the same manner, and with the same relative conditions, in all respects, as are provided for officers of the Army, except as is otherwise provided in the next section.

Aug. 3, 1861, c. 42, ss. 15, 16, 17, v. 12, p. 289; July 17, 1862, c. 200, s. 12, v. 12, p. 596; Jan. 21, 1870, c. 9, s. 1, v. 16, p. 62; July 15, 1870, c. 294, s. 4, v. 16, p. 317; June 10, 1872, c. 419, s. 1, v. 17, p. 378. **Sec. 1622, R. S.**

---

[1] In addition to the recognition of meritorious services by means of brevets, section 1605, Revised Statutes, authorizes the President, with the consent of the Senate, to advance any officer of the Marine Corps not exceeding thirty numbers in rank "for eminent and conspicuous conduct in battle or extraordinary heroism." Section 1607, Revised Statutes, authorizes the President, with the consent of the Senate, to advance any marine officer one grade "if, upon the recommendation of the President, by name, he receives the thanks of Congress for highly distinguished conduct in conflict with the enemy, or for extraordinary heroism in the line of his profession." See also sections 1606 and 1607, Revised Statutes, and the act of March 3, 1901 (31 Stat. L., 1108).

[2] For statutes regulating the pay and allowances of commissioned officers and enlisted men, see the chapter entitled THE PAY DEPARTMENT.

Credit for volunteer service.
Mar. 2, 1867, c. 174, s. 3, v. 14, p. 516.
Sec. 1600, R. S.

432. All marine officers shall be credited with the length of time they may have been employed as officers or enlisted men in the volunteer service of the United States.

Retiring board, composition.
Aug. 3, 1861, c. 42, s. 17, v. 12, p. 289.
Sec. 1623, R.S.

433. In case of an officer of the Marine Corps, the retiring board shall be selected by the Secretary of the Navy, under the direction of the President. Two-fifths of the board shall be selected from the Medical Corps of the Navy and the remainder shall be selected from officers of the Marine Corps, senior in rank, so far as may be, to the officer whose disability is to be inquired of.[1]

ENLISTED MEN.

Enlisted men.
Sec. 23, *ibid.*

434. The enlisted force of the Marine Corps shall consist of five sergeant-majors, one drum major, twenty quartermaster-sergeants, seventy-two gunnery sergeants with the rank and allowance of the first sergeant, and whose pay shall be thirty-five dollars per month; sixty first sergeants; two hundred and forty sergeants; four hundred and eighty corporals; eighty drummers; eighty trumpeters; and four thousand nine hundred and sixty-two privates. *Sec. 23, ibid.*

Marine band.
Sec. 24, *ibid.*

435. The band of the United States Marine Corps shall consist of one leader, with the pay and allowance of a first lieutenant; one second leader, whose pay shall be seventy-five dollars per month, and who shall have the allowances of a sergeant major; thirty first-class musicians, whose pay shall be sixty dollars per month; and thirty second-class musicians, whose pay shall be fifty dollars per month and the allowance of a sergeant; such musicians of the band to have no increased pay for length of service *Sec. 24, ibid.*

Enlistments.
July 11, 1870, Res. 106, v. 16, p. 387.
Sec. 1608, R.S.

436. Enlistments into the Marine Corps shall be for a period not less than five years.

Oath.
July 11, 1798, c. 72, s. 4, v. 1, p. 595.
Sec. 1609, R.S.

437. The officers and enlisted men of the Marine Corps shall take the same oaths, respectively, which are provided by law for the officers and enlisted men of the Army.

Exemption from arrest.
July 11, 1798, c. 72, s. 5, v. 1, pp. 595, 596; June 30, 1834, c. 132, s. 3, v. 4, p. 713.
Sec. 1610, R.S.

438. Marines shall be exempt, while enlisted in said service, from all personal arrest for debt or contract.

Rations.
July 1, 1797, s. 6, v. 1, p. 524; July 11, 1798, s. 2, v. 1, p. 595.
Sec. 1615, R.S.

439. The non-commissioned officers, privates, and musicians of the Marine Corps shall each be entitled to receive one navy ration daily.

Rations on shore duty.
May 4, 1898, v. 30, p. 387.

440. No law shall be construed to entitle enlisted men on shore duty to any rations or commutation therefor other than such as are now, or may hereafter, be allowed to enlisted men of the Army. *Act of May 4, 1898 (30 Stat. L., 387).*

---

[1] For statutes regulating the functions and procedure of retiring boards, see the chapter entitled COMMISSIONED OFFICERS.

The same.
Mar. 3, 1901, v. 31, p. 1130.

441. When it is impracticable or the expense is found greater to supply marines serving on shore duty in the island possessions and on foreign stations with the army ration, such marines may be allowed the navy ration or commutation therefor. *Act of March 3, 1901 (31 Stat. L., 1130).*

ORGANIZATION.

Companies and detachments.
July 11, 1798, c. 72, s. 1, v. 1, p. 594.
Sec. 1611, R. S.

442. The Marine Corps may be formed into as many companies or detachments as the President may direct, with a proper distribution of the commissioned and noncommissioned officers and musicians to each company or detachment.

DUTIES ON SHORE.

Duty on shore.
July 11, 1798, c. 72, s. 6, v. 1, p. 596.
Sec. 1619, R. S.

443. The Marine Corps shall be liable to do duty in the forts and garrisons of the United States, on the seacoast, or any other duty on shore, as the President, at his discretion, may direct.

Regulations.
June 30, 1834, c. 132, s. 8, v. 4, p. 713.
Sec. 1620, R. S.

444. The President is authorized to prescribe such military regulations for the discipline of the Marine Corps as he may deem expedient.

Subject to laws governing the Navy, except when serving with the Army.
June 30, 1834, c. 132, s. 2, v. 4, p. 713; July 11, 1798, c. 72, s. 4, v. 1, p. 595.
Sec. 1621, R. S.

445. The Marine Corps shall, at all times, be subject to the laws and regulations established for the government of the Navy, except when detached for service with the Army by order of the President; and when so detached they shall be subject to the rules and articles of war prescribed for the government of the Army.

Articles of War.
Service on army courts-martial.
78th art. of war.

446. Officers of the Marine Corps detached for service with the Army by order of the President may be associated with officers of the Regular Army on courts-martial for the trial of offenders belonging to the Regular Army, or to forces of the Marine Corps so detached; and in such cases the orders of the senior officer of either corps who may be present and duly authorized shall be obeyed. *Seventy-eighth article of war.*

TRANSFERS.

Transfers from military to naval service.
July 1, 1864, c. 201, s. 1, v. 13, p. 342.
Sec. 1421, R.S.

447. Any person enlisted in the military service of the United States may, on application to the Navy Department, approved by the President, be transferred to the Navy or Marine Corps, to serve therein the residue of his term of enlistment, subject to the laws and regulations for the government of the Navy. But such transfer shall not release him from any indebtedness to the Government, nor, without the consent of the President, from any penalty incurred for a breach of the military law.

DETAILS OF NAVAL OFFICERS.

448. The President may detail, temporarily, three competent naval officers for the service of the War Department in the inspection of transport vessels, and for such other services as may be designated by the Secretary of War.

Officers of the Navy may be detailed for service of the War Department.
Feb. 12, 1862, c. 21, v. 12, p. 333.
Sec. 1437, R. S.

PROHIBITION OF PUNISHMENTS ON VESSELS OF WAR.

449. No other punishment[1] shall be permitted on board of vessels belonging to the Navy, except by sentence of a general or summary court-martial. All punishments inflicted by the commander, or by his order, except reprimands, shall be fully entered in the ship's log. *Article 24, Rules for the Government of the Navy.*

ADMINISTRATION OF OATHS.

450. Judges-advocate of naval general courts-martial and courts of inquiry, and all commanders in chief of naval squadrons, commandants of navy-yards and stations, officers commanding vessels of the Navy, and recruiting officers of the Navy, and the adjutant and inspector, assistant adjutant and inspector, commanding officers, and recruiting officers of the Marine Corps be, and the same are hereby, authorized to administer oaths for the purposes of the administration of naval justice and for other purposes of naval administration.[2] *Act of March 3, 1901 (31 Stat. L., 1086).*

Oaths.
Mar. 3, 1901, v. 31, p. 1086.

---

[1] The "other punishments" above referred to are those authorized to be inflicted by the twenty-fourth naval article of war.

[2] The act of January 25, 1895, (28 Stat. L., 639), had contained a similar provision.

CHAPTER IX.

THE DEPARTMENT OF THE INTERIOR.

Par.
451. Establishment of Department of the Interior.
452. Duties of Secretary.
453. Powers of Secretary.

Establishment of Department of the Interior.
Mar. 3, 1849, c. 108, s. 1, v. 9, p. 395.
Sec. 437, R. S.

451. There shall be at the seat of Government an Executive Department to be known as the Department of the Interior, and a Secretary of the Interior, who shall be the head thereof.

Duties of Secretary.
Mar. 3, 1849, c. 108, ss. 3, 5, 6, 7, 8, 9, v. 9, p. 395; July 8, 1870, c. 230; s. 1, v. 16, p. 198; Feb. 5, 1859, c. 22, s. 1, v. 11, p. 379; July 20, 1868, c. 176, s. 1, v. 15, pp. 92, 106.
Sec. 441, R. S.

452. The Secretary of the Interior is charged with the supervision of public business relating to the following subjects:

First. The census; when directed by law.

Second. The public lands, including mines.[1]

Third. The Indians.[2]

Fourth. Pensions and bounty lands.

Fifth. Patents for inventions.[3]

Seventh. Education.

Eighth. Government Hospital for the Insane.[4]

Ninth. Columbia Asylum for the Deaf and Dumb.

Powers of Secretary.
Mar. 1, 1873, c. 217, v. 17, p. 484.
Sec. 442, R. S.

453. The Secretary of the Interior shall hereafter exercise all the powers and perform all the duties in relation to the Territories of the United States that were, prior to March first, eighteen hundred and seventy-three, by law or by custom exercised and performed by the Secretary of State.

---

[1] For statutes respecting the public lands see the chapter so entitled.

[2] By section 6 of the act of March 3, 1849 (9 Stat. L., 395), the supervising and appellate powers in respect to Indian affairs, formerly exercised by the Secretary of War, were transferred to the Secretary of the Interior. For statutes respecting the Indians see the chapter so entitled.

[3] The distribution of public documents, vested in the Department of the Interior by the act of February 5, 1859 (11 Stat. L., 379), and subsequent statutes, was, by sections 61–64 of the act of January 12, 1895 (28 Stat. L., 601), transferred to the Superintendent of Documents, an officer acting under the supervision of the Public Printer.

[4] For statutes regulating admission in, etc., to this establishment see the chapter entitled THE GOVERNMENT ASYLUM FOR THE INSANE.

CHAPTER X.

THE REVISED STATUTES[1]—THE STATUTES AT LARGE—THE ARMY REGULATIONS—THE ARMY REGISTER.

Par.
454–468. The Revised Statutes, edition of 1874.
469–473. The same, edition of 1878.
474–480. The supplements to the Revised Statutes.
Par.
481–486. The Statutes at Large.
487–489. The Army Regulations.
490–494. The Army Register.

THE REVISED STATUTES.

Par.
454. Commissioners to revise and consolidate the General Statutes of the United States.
455. Duties of the commissioners.
456. Work to be submitted to Congress.
457. Revision to be completed as soon as practicable.
458. Preparation of Revised Statutes for printing. Headnotes. Marginal references. References to judicial decisions. Index.
459. Printed copies to be evidence.
460. Title of revision of statutes.
461. Certificate to Revised Statutes.
462. Scope of Revised Statutes.
463. Repeal of acts embraced in revision.
464. Accrued rights reserved.
Par.
465. Prosecutions and punishments.
466. Acts of limitation.
467. Arrangement and classification of sections.
468. Acts passed since December 1, 1873, not affected.
469. Commissioner to prepare new edition of Revised Statutes.
470. Duty of commissioner. Amendments. References. Revision of indexes.
471. Additional matter to be included.
472. When to be completed. To be legal evidence.
473. New edition of Revised Statutes to be prima facie evidence.

454. The President of the United States is hereby authorized, by and with the advice and consent of the Senate, to appoint three persons, learned in the law, as commissioners, to revise, simplify, arrange, and consolidate all statutes of the United States, general and permanent in

Commissioners to revise and consolidate the General Statutes of the United States.

June 27, 1866, v. 14, p. 74.

---

[1] The Revised Statutes must be accepted as the law on the subjects which they embrace as it existed on the 1st day of December, 1873, and were enacted to present the entire body of the laws in a concise and compact form. When the language of the Revised Statutes is plain and unambiguous, the grammatical structure simple and accurate, and the meaning of the whole intelligible and obvious, a court is not at liberty, by construction, to reproduce the law as it stood before the revision. U. S. *v.* Bowen, 100 U. S., 508. See also Wright *v.* U. S., 15 Ct. Cls., 80, 86; U. S. *v.* No. Am. Com. Co., 74 Fed. Rep., 145.

their nature, which shall be in force at the time such commissioners may make the final report of their doings. *Act of June 27, 1866 (14 Stat. L., 74).*

Duties of the commissioners. Sec. 2, *ibid.*

455. In performing this duty the commissioners shall bring together all statutes and parts of statutes which, from similarity of subject, ought to be brought together, omitting redundant or obsolete enactments, and making such alterations as may be necessary to reconcile the contradictions, supply the omissions, and amend the imperfections of the original text; and they shall arrange the same under titles, chapters, and sections, or other suitable divisions and subdivisions, with headnotes briefly expressive of the matter contained in such divisions; also with side notes, so drawn as to point to the contents of the text, and with references to the original text from which each section is compiled, and to the decisions of the Federal courts, explaining or expounding the same, and also to such decisions of the State courts as they may deem expedient; and they shall provide by a temporary index, or other expedient means, for an easy reference to every portion of their report. *Sec. 2, ibid.*

Work to be submitted to Congress. Sec. 3, *ibid.*

456. That when the commissioners have completed the revision and consolidation of the statutes, as aforesaid, they shall cause a copy of the same, in print, to be submitted to Congress, that the statutes so revised and consolidated may be reenacted, if Congress shall so determine; and at the same time they shall also suggest to Congress such contradictions, omissions, and imperfections as may appear in the original text, with the mode in which they have reconciled, supplied, and amended the same; and they may also designate such statutes or parts of statutes as, in their judgment, ought to be repealed, with their reasons for such repeal.[1] *Sec. 3, ibid.*

* * * * *

---

[1] The act of June 27, 1866 (14 Stat. L., 74), was revived by the act of May 4, 1870, (16 Stat. L., 96), which authorized the President to appoint three commissioners to prosecute and complete the work prescribed by that statute. The work of revision was to be completed within three years from the date of passage of the act (May 4, 1870). The act of March 3, 1873 (17 Stat. L., 579), authorized the appointment of a joint committee of Congress to accept the draft of the revision of laws, so far as the same was completed at the expiration of the time designated for that purpose (May 4, 1873). The same statute authorized the existing joint committee to contract with some suitable person or persons to prepare a revision of the statutes, already reported by the commissioners, in the form of a bill to be presented at the opening of the Forty-third Congress. The publication of the first edition of the Revised Statutes was authorized by the act of June 20, 1874 (18 Stat. L., 113); pp. 401–403, *post.*

457. That the statutes so revised and consolidated shall be reported to Congress as soon as practicable, and the whole work closed without unnecessary delay. *Sec. 5, ibid.*

Revision to be completed as soon as practicable. Sec. 5, *ibid.*

* * * * *

FIRST EDITION OF THE REVISED STATUTES.

458. That the Secretary of State is hereby charged with the duty of causing to be prepared for printing, publication, and distribution the Revised Statutes of the United States enacted at this present session of Congress; that he shall cause to be completed the headnotes of the several titles and chapters and the marginal notes referring to the statutes from which each section was compiled and repealed by said revision; and references to the decisions of the courts of the United States explaining or expounding the same, and such decisions of State courts as he may deem expedient, with a full and complete index to the same.

Preparation of Revised Statutes for printing, etc. Sec. 2, June 20, 1874, v. 18, p. 113.

Headnotes.

Marginal references to original statutes.

References to judicial decisions.

Index.

459. And when the same shall be completed, the said Secretary shall duly certify the same under the seal of the United States, and when printed and promulgated as hereinafter provided, the printed volumes shall be legal evidence of the laws and treaties therein contained, in all the courts of the United States, and of the several States and Territories.[1] *Sec. 2, act of June 20, 1874 (18 Stat. L., 113).*

Promulgation.

Printed copies to be evidence.

460. That the revision of the statutes of a general and permanent nature, with the index thereto, shall be printed in one volume, and shall be entitled and labeled "Revised Statutes of the United States;" and the revision of the statutes relating to the District of Columbia; to post-roads, and the public treaties in force on the first day of December, one thousand eight hundred and seventy-three, with a suitable index to each, shall be published in a separate volume, and entitled and labeled "Revised Statutes relating to District of Columbia and Post-Roads. Public Treaties." *Sec. 3, ibid.*

Title of revision of statutes. Sec. 3, *ibid.*

461. That the certificate to the printed volume of the Revised Statutes of the United States required by section

Certificate to Revised Statutes. Dec. 28, 1874, v. 18, p. 293.

---

[1] The first edition of the Revised Statutes is a transcript of the original in the State Department. It is prima facie evidence of the law, but the original is the only conclusive evidence of the exact text of the law. Wright *vs.* U. S., 15 Ct. Cls., 80, 87.

The incorporation of a particular statutory provision into the Revised Statutes, adopted in 1874, was a legislative declaration that the law on that subject was as therein provided; and, in the absence of any obscurity in the meaning, the court can not look to the preexisting statutes to see whether or not they were correctly incorporated. U. S. *v.* The North American Commercial Co., 74 Fed. Rep., 145; U. S. *v.* Bowen, 100 U. S., 508. As to the effects of amendments to the Revised Statutes, see U. S. *v.* Jessup, 15 Fed. Rep., 790.

two of "An act providing for publication of the revised statutes and laws of the United States," approved June twentieth, eighteen hundred and seventy-four, shall be made by the Secretary of State under the seal of the Department of State, and so much of said section as provides that such certificate shall be under the seal of the United States, is hereby repealed. *Act of December 28, 1874 (18 Stat. L., 293).*

SCOPE OF THE REVISED STATUTES AND REPEAL PROVISIONS.

Scope of Revised Statutes. Sec. 5595, R.S.

462. The foregoing seventy-three titles embrace the statutes of the United States general and permanent in their nature, in force on the first day of December, one thousand eight hundred and seventy-three, as revised and consolidated by commissioners appointed under an act of Congress, and the same shall be designated and cited, as The Revised Statutes of the United States.[1]

Repeal of acts embraced in revision. Sec. 5596, R.S.

463. All acts of Congress passed prior to said first day of December, one thousand eight hundred and seventy-three, any portion of which is embraced in any section of said revision, are hereby repealed, and the section applicable thereto shall be in force in lieu thereof; all parts of such acts not contained in such revision having been repealed or superseded by subsequent acts, or not being general and permanent in their nature: *Provided*, That the incorporation into said revision of any general and permanent provision, taken from an act making appropriations, or from an act containing other provisions of a private, local, or temporary character, shall not repeal, or in any way affect any appropriation, or any provision of a private, local, or temporary character, contained in any of said acts, but the same shall remain in force; and all acts of Congress passed prior to said last-named day, no part of which are embraced in said revision, shall not be affected or changed by its enactment.

Accrued rights reserved. Sec. 5597, R.S.

464. The repeal of the several acts embraced in said revision shall not affect any act done, or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause before the said repeal, but all rights and liabilities under said acts shall continue, and may be enforced in the same manner, as if said repeal had not been

---

[1] The Revised Statutes are an act of Congress. The enactment was approved and became the law on June 22, 1874. Wright *v.* U. S., 15 Ct. Cls., 80. In case of doubt, ambiguity, or uncertainty the previous statutes may be referred to. Ibid. See also Bowen *v.* U. S., 100 U. S., 508. U. S. *v.* Bowen, 100 U. S., 508; Bate Refrigerating Co. *v.* Sulzberger, 157 U. S., 1.

made; nor shall said repeal in any manner affect the right to any office, or change the term or tenure thereof.

Prosecutions and punishments.
Sec. 5598, R.S.

465. All offenses committed, and all penalties or forfeitures incurred under any statute embraced in said revision prior to said repeal, may be prosecuted and punished in the same manner and with the same effect as if said repeal had not been made.

Acts of limitation.
Sec. 5599, R.S.

466. All acts of limitation, whether applicable to civil causes and proceedings, or to the prosecution of offenses, or for the recovery of penalties or forfeitures, embraced in said revision and covered by said repeal, shall not be affected thereby, but all suits, proceedings, or prosecutions, whether civil or criminal, for causes arising or acts done or committed prior to said repeal, may be commenced and prosecuted within the same time as if said repeal had not been made.

Arrangement and classification of sections.
Sec. 5600, R.S.

467. The arrangement and classification of the several sections of the revision have been made for the purpose of a more convenient and orderly arrangement of the same, and therefore no inference or presumption of a legislative construction is to be drawn by reason of the title under which any particular section is placed.

Acts passed since Dec. 1, 1873, not affected.
Feb. 18, 1875, c. 84, v. 18, p. 329; Mar. 3, 1875, c. 130, s. 9, v. 18, p. 401.
Sec. 5601, R.S.

468. The enactment of the said revision is not to affect or repeal any act of Congress passed since the 1st day of December, one thousand eight hundred and seventy-three, and all acts passed since that date are to have full effect as if passed after the enactment of this revision, and so far as such acts vary from or conflict with any provision contained in said revision, they are to have effect as subsequent statutes, and as repealing any portion of the revision inconsistent therewith.

SECOND EDITION OF THE REVISED STATUTES.

EDITION OF 1878.

Commissioner to prepare new edition of Revised Statutes.
Mar. 2, 1877, v. 19, p. 268.

469. That the President of the United States be, and he is hereby, authorized to appoint, by and with the advice and consent of the Senate, one person, learned in the law, as a commissioner, for the purpose of preparing and publishing a new edition of the first volume of the Revised Statutes of the United States.[1] *Act of March 2, 1877 (19 Stat. L., 268).*

---

[1] The second edition of the Revised Statutes is only a new publication; a compilation, containing the original law, with specific amendments incorporated therein according to the judgment of the editor. Wright *v.* U. S., 15 Ct. Cls., 80. The Revised Statutes did not affect statutes passed between December 1, 1873, and June 22, 1874. See note 1 to paragraph 405, *ante.*

Duty of commissioner. Sec. 2, *ibid.*

470. That in performing this duty, said commissioner shall be required to incorporate into the text of the Revised Statutes as published in the year anno Domini eighteen hundred and seventy-five, under the act of June twentieth, eighteen hundred and seventy-four, all the amendments which have been made in the revision so published since the first day of December, eighteen hundred and seventy-three, and all that shall be made up to the close of the present session of Congress, with marginal references to such amendatory acts, and to all the decisions of the several courts of the United States (as far as the same may have been published) which may have been made subsequent to those already cited in the margin of the present revision, and may include also citations to such judicial decisions of the various State courts as he may deem important; and he shall also make marginal references to the various statutes passed by Congress since the first day of December, eighteen hundred and seventy-three, not expressly therein declared to be amendments to the Revised Statutes, but which, in the opinion of said commissioner, may in any manner affect or modify any of the provisions of the said Revised Statutes, or any of the amendments thereto, indicating in such marginal notes by a difference in type the references to statutes of this kind, and he shall revise the indexes and incorporate therein references to the additions herein required. *Sec. 2, ibid.*

Amendments.

References.

Revision of indexes.

Additional matter to be included. Sec. 3, *ibid.*

471. That there shall also be included in said edition the Articles of Confederation, the Declaration of our National Independence, the Ordinance of seventeen hundred and eighty-seven for the government of the Northwestern Territory, the Constitution of the United States, with footnotes referring to decisions of the Federal courts thereon, the "Act to provide for the revision and consolidation of the statute laws of the United States," approved June twenty-seventh, eighteen hundred and sixty-six, and the "Act providing for publication of the Revised Statutes and the laws of the United States," approved June twentieth, eighteen hundred and seventy-four, as well as the present act. *Sec. 3, ibid.*

When to be completed. Sec. 4, *ibid.*

472. That said new edition shall be completed in manuscript by said commissioner by the first day of January, anno Domini eighteen hundred and seventy-eight, and by him presented to the Secretary of State for his examination and approval, who is hereby required to examine and compare the same, as amended, with all the amendatory acts, and, within two months after having been submitted

Mar. 9, 1878, v. 20, p. 27.

to him, and when the same shall be completed, the said Secretary shall duly certify the same under the seal of the Secretary of State, and when printed and promulgated as herein provided the printed volume shall be legal evidence of the laws therein contained, in all the courts of the United States, and of the several States and Territories, but shall not preclude reference to nor control, in any case of discrepancy, the effect of any original act as passed by Congress since the first day of December, eighteen hundred and seventy-three, and said Secretary shall cause fifteen thousand copies of the same to be printed and bound at the Government Printing Office, under the supervision of said commissioner, at the expense of the United States, and without unnecessary delay.[1] *Sec. 4, ibid.*

To be legal evidence.

Mar. 9, 1878, v. 20, p. 27.

473. That an act entitled "An act to provide for the preparation and publication of a new edition of the Revised Statutes of the United States," approved March second, eighteen hundred and seventy-seven, be, and the same is hereby, amended as follows, to wit: By striking out from

New edition of Revised Statutes to be prima facie evidence.

Mar. 9, 1878, v. 20, p. 27.

---

[1] Under the authority conferred by this statute the Hon. George S. Boutwell was appointed a commissioner to prepare the new edition. The following extract from the preface to the second edition of the Revised Statutes will explain its scope.

By an act of Congress approved March 2, 1877 (v. 19, c. 82, p. 268), authority was given for the appointment by the President of a commissioner, whose duty it should be to prepare and publish, subject to the examination and approval of the Secretary of State, a new edition of the first volume of the Revised Statutes of the United States.

The jurisdiction of the commissioner was defined and limited by the statute. He was directed to incorporate into the text of the first edition of the statutes all the amendments made since the first day of December, eighteen hundred and seventy-three, including those made by the Forty-fourth Congress, with marginal references to the acts of amendment and to the decisions of the several courts of the United States, with like references to all the statutes passed in the same period, which, in the opinion of the commissioner, might in any many affect or modify any of the provisions of the first edition of the Revised Statutes.

He was also directed to include in the new edition the Articles of Confederation, the Declaration of our National Independence, the Ordinance of Seventeen hundred and eighty-seven for the Government of the Northwestern Territory, and the Constitution of the United States, with footnotes referring to the decisions of the Federal courts thereon. These papers were not printed with the first edition of the statutes.

This edition is not in any proper sense a new revision of the statutes of the United States. The commissioner was not clothed with power to change the substance or to alter the language of the existing edition of the Revised Statutes, nor could he correct any errors or supply any omissions therein except as authorized by the several statutes of amendment. Of specific amendments there are, however, several hundred, which have been incorporated with the text. The portions of the statutes repealed are printed in italics and included in brackets, and the new matter introduced is printed in the ordinary roman letter and also included in brackets.

So much of the work as affects the text of the present edition has been examined under the direction of the Hon. William M. Evarts, Secretary of State, by Hon. Charles P. James, one of the commissioners by whom the first edition of the Revised Statutes was prepared.

The acts of Congress passed since the first edition of the Revised Statutes was issued, and affecting the text thereof, are referred to in the margin of the respective sections so affected.

In this edition full and, it is believed, complete notes of reference to the opinions of the Supreme Court of the United States will be found under the several para-the ninth and tenth lines of section four,[1] as published in the nineteenth volume of the Statutes at Large, the words "and conclusive;" and, in the tenth line, the words "and treaties;" and, by inserting after the word "Territories," at the end of the eleventh line, the following words, to wit: "but shall not preclude reference to, nor control, in case of any discrepancy, the effect of any original act as passed by Congress since the first day of December, eighteen hundred and seventy-three." *Act of March 9, 1878 (20 Stat. L., 27).*

SUPPLEMENTS TO THE REVISED STATUTES.

Par.		Par.	
474, 475.	The supplement of 1881.	478.	The supplement of 1895 (Vol. II).
476, 477.	The supplement of 1891 (Vol. I).	479, 480.	The supplement of 1899.

THE SUPPLEMENT OF 1881.

Supplement to the Revised Statutes.
Joint res. No. 44, June 7, 1880, v. 21, p. 308.

474. That the supplement to the Revised Statutes, embracing the statutes general and permanent in their nature passed after the Revised Statutes with references connecting provisions on the same subject, explanatory notes, citations of judicial decisions, and a general index, prepared by William A. Richardson, be stereotyped at the Government Printing Office; and the index and plates thereof and all right and title therein and thereto shall be in and fully belong to the Government for its exclusive use and benefit.[2] *Joint resolution No. 44, June 7, 1880 (21 Stat. L., 308).*

* * * * *

---

graphs of the Constitution to which the opinions respectively relate, and reference is also made to the small number of decisions which interpret or in any manner touch the Ordinance for the Government of the Northwestern Territory.

The appendix contains the various statutes which provide for or relate to the "revision and consolidation of the statute laws of the United States," and also a cross index by which the various provisions of the Revised Statutes may be traced to the original enactments in the Statutes at Large.

In the preparation of the index I have had the best assistance which I could command, and no labor has been avoided that could contribute in the least to the perfectness of the work. While it is not probable that the end sought has been attained I indulge the hope that the character of the index may, in some reasonable degree, meet the expectation of Congress, the executive officers of the Government, the judiciary, and the profession generally.

The analytical index to the Constitution was prepared by W. J. McDonald, esq., late Chief Clerk of the United States Senate.

The historical notes to the Declaration of Independence, the Articles of Confederation, and the Constitution are taken from a work entitled "The Organic Laws of the United States of America," prepared by Maj. Ben: Perley Poore, and printed by authority of Congress.

[1] Paragraph 474, *ante*.

[2] Under this resolution a supplement was published in 1881, entitled volume 1. It was then supposed that other volumes would be authorized, from time to time, by subsequent legislation. This proved not to be the case, as the act of April 9, 1890 (paragraph 420, *post*), provided for the continuation of the publication, to be issued in one volume and to embrace the general laws passed subsequent to the issue of the Revised Statutes and including those of the Forty-seventh, Forty-eighth, Forty-ninth, Fiftieth, and Fifty-first Congresses. See note 2 to paragraph 423, *post*.

475. The publication herein authorized shall be taken to be prima facie evidence of the laws therein contained, in all the courts of the United States and of the several States and Territories therein; but shall not preclude reference to, nor control, in case of any discrepancy, the effect of any original act as passed by Congress: *Provided*, That nothing herein contained shall be construed to change or alter any existing law. *Ibid.*

To be prima facie evidence. *Ibid.*

Proviso.

THE SUPPLEMENT OF 1891, VOL. I.

476. That the publication of the Supplement to the Revised Statutes, embracing the statutes general and permanent in their nature, passed after the Revised Statutes, with references connecting provisions on the same subject, explanatory notes, and citations of judicial decisions, be continued and issued in one volume, to include the general laws of the Forty-seventh, Forty-eighth, Forty-ninth, Fiftieth, and Fifty-first Congresses, with a table of alterations and a general index to the whole, to be prepared and edited by the editor of the existing Supplement, authorized by the joint resolution of June twenty-eighth, eighteen hundred and eighty, numbered forty-four (Supplement to Revised Statutes, page five hundred and eighty-two), to be stereotyped at the Government Printing Office, using the present plates, as far as practicable, with such alterations as may be found necessary, the work and plates and all right and title therein and thereto to be in and fully belong to the Government for its exclusive use and benefit. *Act of April 9, 1890 (26 Stat. L., 50).*

Supplement of 1891 to Revised Statutes. Apr. 9, 1890, v. 26, p. 50.

Contents.

*   *   *   *   *

477. That the publication herein authorized shall be taken to be prima facie evidence of the laws therein contained, but shall not change nor alter any existing law, nor preclude reference to nor control, in case of any discrepancy, the effect of any original act passed by Congress.[1] *Sec. 3, ibid.*

To be prima facie evidence. Sec. 3, *ibid.*

THE SUPPLEMENT OF 1895, VOL. II.

478. That the publication of the Supplement to the Revised Statutes of the United States shall be further continued under the editorial charge of the editor of the

Supplement of 1895, continued. Feb. 27, 1893, v. 27, p. 477.

---

[1] The volume published in conformity to the authority herein conferred was published in 1891, and is entitled "Vol. 1, Supplement to the Revised Statutes of the United States. Second edition. 1874–1891," and supersedes the volume published under the authority conferred by the joint resolution, No. 44, of June 7, 1880 (21 Stat. L., 308).

existing Supplement and his assistants.[1] *Act of February 27, 1893 (27 Stat. L., 477).*

THE SUPPLEMENT OF 1899.

Supplement of 1899.
July 1, 1898, v. 30, p. 615.

479. To enable the Secretary of the Treasury to pay, when the work shall be completed, for preparing and editing a Supplement to the Revised Statutes of the United States for the Fifty-fifth Congress, under the act of February twenty-seventh, eighteen hundred and ninety-three * * * dollars. *Act of July 1, 1898 (30 Stat. L., 615).*

Publication of supplements.
June 4, 1897, v. 30, p. 30.

480. Hereafter the Supplement of the Revised Statutes shall only be published at the expiration of a Congress, and in one volume, and all expenses of preparing and editing the same shall not exceed one thousand dollars. *Act of June 4, 1897 (30 Stat. L., 30).*

THE STATUTES AT LARGE.[2]

Par.
481. Publication.
482. Distribution and sale.
483, 484. Printed copies to be legal.
485. Evidence.
486. Preservation of copies.

Publication.
Feb. 27, 1893, v. 27, p. 477.

481. At the end of each session of Congress a pamphlet edition of the permanent and general legislation of the session, with notes, references, and an index, substantially on the plan of the existing Supplement, shall be stereotyped and printed at the Government Printing Office; the plates and all rights thereto to be the property of the United States. That the number of copies of said pam-

---

[1] Under the authority conferred by this statute a second volume of the Supplement was published in 1895. It contains all general legislation of the Fifty-second and Fifty-third Congresses between January 22, 1892, and March 2, 1895.

[2] *Table showing the period covered by each of the thirty-one volumes of the Statutes at Large.*

Stat. L.	Period.		Stat. L.	Period.	
	From—	To—		From—	To—
Vol. 1	Mar. 4, 1789	Mar. 3, 1799	Vol. 17	Mar. 4, 1871	Mar. 4, 1873
2	Dec. 2, 1799	Mar. 3, 1813	18	Dec. 1, 1873	Mar. 4, 1875
3	May 24, 1813	Mar. 3, 1823	19	Dec. 6, 1875	Mar. 3, 1877
4	Dec. 1, 1823	Mar. 3, 1835	20	Oct. 15, 1877	Mar. 4, 1879
5	Dec. 7, 1835	Mar. 3, 1845	21	Mar. 18, 1879	Mar. 4, 1881
6*a*	Mar. 4, 1789	Mar. 3, 1845	22	Dec. 5, 1881	Mar. 3, 1883
7*b*			23	Dec. 3, 1883	Mar. 3, 1885
8*c*			24	Dec. 7, 1885	Mar. 3, 1887
9	Dec. 1, 1845	Mar. 3, 1851	25	Dec. 5, 1887	Mar. 2, 1889
10	Dec. 1, 1851	Mar. 3, 1855	26	Dec. 2, 1889	Mar. 3, 1891
11	Dec. 3, 1855	Mar. 3, 1859	27	Dec. 7, 1891	Mar. 3, 1893
12	Dec. 5, 1859	Mar. 4, 1863	28	Aug. 7, 1893	Mar. 3, 1895
13	Dec. 7, 1863	Mar. 4, 1865	29	Dec. 2, 1895	Mar. 3, 1897
14	Dec. 4, 1865	Mar. 4, 1867	30	Mar. 15, 1897	Mar. 3, 1899
15	Mar. 4, 1867	Mar. 4, 1869	31	Dec. 4, 1899	Mar. 3, 1901
16	Mar. 4, 1869	Mar. 4, 1871			

a Private laws.
b Indian treaties.
c European treaties, with general index to vols. 1-4, inclusive, Statutes at Large.

phlet and the distribution and sale thereof shall be the same as provided for the printing, distribution, and sale of said Supplement by the act of April ninth, eighteen hundred and ninety. *Act of February 27, 1893 (27 Stat. L., p. 477).*

Distribution and sale.
Pamphlet copies.
Jan. 12, 1895, s. 73, v. 28, p. 614.

482. The Secretary of State shall cause to be edited, printed, published, and distributed pamphlet copies of the statutes of the present and each future session of Congress to the officers and persons hereinafter provided for; said distribution shall be made at the close of every session of Congress, as follows:

To the President and Vice-President of the United States, two copies each;

* * * * *

To the War Department, two hundred copies;

* * * * *

Sec. 73, act of January 12, 1895 (28 Stat. L., 601, 614.)

Copies for sale.
Ibid.

483. The Secretary of State is authorized to have printed as many additional copies of the pamphlet laws as he may deem needful for distribution and sale by him, at cost price, not exceeding one thousand copies of the laws of any one session in any one year. *Ibid.*

Bound copies.
Ibid.

484. After the close of each Congress the Secretary of State shall have edited, printed, and bound a sufficient number of the volumes containing the Statutes at Large enacted by that Congress to enable him to distribute copies, or as many thereof as may be needed, as follows:

To the President of the United States, four copies, one of which shall be for the library of the Executive Mansion;

* * * * *

To the War Department, seventy-five copies;

* * * * *

Ibid.

Printed copies to be evidence.
Ibid.

485. The pamphlet copies of the statutes and the bound copies of the acts of each Congress shall be legal evidence of the laws and treaties therein contained in all the courts of the United States and of the several States therein. The said pamphlet and the Statutes at Large shall contain all laws, joint and concurrent resolutions passed by Congress, and also all conventions, treaties, proclamations, and agreements. *Ibid.*

Preservation of copies of Statutes at large.
Aug. 8, 1846, c. 100, s. 1, v. 9, p. 75.
Sec. 1775, R.S.

486. The various officers of the United States to whom, in virtue of their offices and for the uses thereof, copies of the United States Statutes at Large, published by Little, Brown and Company, have been or may be distributed at the public expense, by authority of law, shall preserve such copies, and deliver them to their successors respectively as a part of the property appertaining to the office. A printed copy of this section shall be inserted in each volume of the Statutes distributed to any such officers.

ARMY REGULATIONS.

Par.
487. President authorized to make and publish regulations for the Army.

Par.
488. Secretary of War to cause all regulations now in force to be codified and published to the Army.

President authorized to make and publish regulations fo the Army.
Mar. 1, 1875, v. 18, p. 337.

487. That so much of the act approved July 15, 1870,[1] entitled "An act making appropriations for the support of the Army for the year ending June 30, 1871, and for other purposes" as requires the system of General Regulations for the Army therein authorized to be reported to Congress at its next session, and approved by that body be, and the same is hereby, repealed; and the President is hereby authorized, under said section, to make and publish regulations for the government of the Army in accordance with existing laws.[2] *Act of March 1, 1875* (*18 Stat. L., 337.*)

---

[1] Section 37 of the act of July 28, 1866 (14 Stat. L., 337), contained the following requirement: "The Secretary be and he is hereby directed to have prepared and to report to Congress, at its next session, a code of regulations for the government of the Army, and of the militia in actual service, which shall embrace all necessary orders and forms of a general character for the performance of all duties incumbent on officers and men in the military service, including rules for the government of courts-martial, the existing regulations to remain in force until Congress shall have acted on said report." No code of regulations was submitted to Congress in conformity to the terms of this statute, and it was subsequently held by the Attorney-General of the United States, in an opinion rendered in the case of Contract-Surgeon Bayne (XVII Opin. Att. Gen., 461), that the above section, if not repealed by the general repealing clause of the Revised Statutes (section 5596), was superseded by the act of March 1, 1875 (18 Stat. L., 337), (*a*) which in effect conferred authority to modify existing Army Regulations as well as to create new ones. It was also held by the same officer that the code of regulations prepared in conformity to the authority conferred by section 2 of the act of June 23, 1879, (*b*) which was approved and published to the Army on February 17, 1881 (Army Regulations of 1881), superseded the code of Army Regulations of 1863 (XVII Opin. Att. Gen., 461). See, also, U. S. *v.* Eaton, 144 U. S., 617, 688; Caha *v.* U. S., 152 U. S., 212, 219; Morrison *v.* U. S., 13 Ct. Cls., 1–6; Smith *v.* U. S., 23 ibid., 452; Low *v.* Harrison, 72 Maine, 104.

[2] The codification of the "Regulations of the Army and General Orders," prepared in conformity to section 2 of the Act of June 23, 1879 (21 Stat. L., 34), which was approved and promulgated to the Army on February 17, 1881 (Army Regulations of 1881), superseded the body of regulations similarly promulgated in 1863. XVII Opin. Att. Gen., 461.

The Army Regulations derive their force from the power of the President as Commander in Chief, and are binding upon all within the sphere of his legal and constitutional authority. Kurtz *v.* Moffatt, 115 U. S., 487, 503; U. S. *v.* Eliason, 16 Pet., 291; U. S. *v.* Freeman, 3 How., 556. The power of the Executive to establish rules and regulations for the government of the Army is undoubted. The power to establish implies, necessarily, the power to modify or repeal, or to create anew. The Secretary of War is the regular, constitutional organ of the President for the administration of the military establishment of the nation, and orders publicly promulgated through

---

[a] Paragraph, *post.*

[b] 21 Stat. L., 34.

489. That the Secretary of War is authorized and directed to cause all the regulations of the Army now in force to be codified and published to the Army, and to defray the expenses thereof out of the contingent fund of the Army.[1] *Sec. 2, act of June 23, 1879 (21 Stat. L., 34).*

Secretary of War to cause all regulations now in force to be codified and published to the Army.
Sec. 2, June 23, 1879, v. 21, p. 34.

---

him must be received as the act of the Executive and, as such, be binding upon all within the sphere of his legal or constitutional authority. Such regulations can not be questioned or defied because they may be thought unwise or mistaken. U. S. *v.* Eliason, 16 Pet., 291, 302.

The term regulations of an Executive Department describes rules and regulations relating to subjects on which a department acts, which are made by the head under an act of Congress conferring that power, and thereby giving to such regulations the force of law. A mere order of the President or of a Secretary is not a regulation. Harvey *v.* U. S., 3 Ct. Cls., 38, 42; Dig. Opin. J. A. G., par. 494, and note 1; IV Compt. Dec., 225. A "regulation" affects a class of officers; an "instruction" is a direction to govern the conduct of the particular officer to whom it is addressed. Landram *v.* U. S., 16 Ct. Cls. 74. The Army Regulations when sanctioned by the President have the force of law, because it is done by him by the authority of law. U. S. *v.* Freeman, 3 How., 556; Gratiot *v.* U. S., 4 How., 80; Ex parte Reed, 100 U. S., 13; Smith *v.* U. S., 23 Ct. Cls., 452. When Congress permits regulations to be formulated and published and carried into effect from year to year, the legislative ratification must be implied. Maddox *v.* U. S., 20 Ct. Cls., 193, 198.

The authority of the head of an Executive Department to issue orders, regulations, and instructions, with the approval of the President, is subject to the condition, necessarily implied, that they must be consistent with the statutes which have been enacted by Congress. U. S. *v.* Symonds, 120 U. S., 46, 49; U. S. *v.* Bishop, idem., 51; Dig. Opin. J. A. G., par. 494, note 2; par. 6, p. 168. Regulations can have no retroactive effect. (U. S. *v.* Davis, 132 U. S., 334.) Provision of statute exists by which the statute regulations of the Army may, within certain limits, be altered by the Secretary of War, but there is no such provision in regard to the statute regulations of the Navy. VI Opin. Att. Gen., 10; 8 ibid., 337. The same discrepancy exists in the military law of Great Britain. Ibid.

Regulations prescribed and framed by the Secretary of War and which are intended for the direction and government of the officers of the Army and agents of the Department do not bind the Commander in Chief nor the head of the War Department. Burns *v.* U. S., 12 Wall., 246; Smith *v.* U. S., 24 Ct. Cls., 209, 215. But see Arthur *v.* U. S., 16 Ct. Cls., 422, and U. S. *v.* Barrows, 1 Abb., 351.

Regulations which heads of Departments are expressly authorized to make, in which the public is interested, become a part of that body of public records of which the courts take judicial notice. Caha *v.* U. S., 152 U. S., 211.

The purpose of a regulation is to carry into effect the law; but where rights, duties, and obligations are defined by statute they can not be taken away or abridged by regulations. Laurey *v.* U. S., 32 Ct. Cls., 259; U. S., *v.* Garlinger, 169 U. S., 316.

While regulations duly promulgated have the force of law in a limited sense, they can not enlarge or restrict the liability of the officer on his bond. Meads *v.* U. S., 81 Fed. Rep., 684.

Amendment and waiver of regulations.—Regulations made by the head of a Department may be amended or waived in their application to particular cases. III Compt. Dec., 305; IV, ibid., 40; I, ibid., 326. There must be a specific waiver, however, and in the absence of such specific waiver the regulation as it stands will be applied by the accounting officers in the settlement of accounts. III, ibid., 304; IV, ibid., 40.

[1] The Secretary of War is expressly authorized by other enactments of Congress to prescribe regulations for the transportation, safe-keeping, and distribution of articles of supply purchased by the Quartermaster's and Subsistence Departments (sec. 219, R. S.); for the preparation, submission, and opening of bids, act of April 10, 1878 (20 Stat. L., 36); for the deposit of refuse and débris from rivers that is calculated to interfere with navigation, act of August 5, 1886 (24 Stat. L., 329); for the deposit of refuse material beyond the harbor lines established in accordance with statutes, sec. 11, act of September 11, 1890 (26 Stat. L., 455); for the use of the channel at the mouth of the Mississippi River which has been improved by the United States, act of June 1, 1874 (18 Stat. L., 50); for the use and operation of canals and other works of river and harbor improvement which have been purchased or constructed by the United States, sec. 4, act of August 17, 1894 (28 Stat. L., 362); for the construction of bridges across the navigable waters of the United States; for the use of certain drawbridges,

THE ARMY REGISTER.

Par.
490. Army Register to be furnished annually to the Senate.
491. The same to be furnished annually to the House of Representatives.
492. Schedule of pay to appear.
493. Volunteer rank.
494. Lineal rank.

Army Register to be furnished annually to the Senate.
Sen. res. Dec. 13, 1815.

490. That the Secretary of War and the Secretary of the Navy be requested to furnish annually, on the first of January, each member of the Senate with a copy of the Register of the officers of the Army and Navy of the United States. *Senate resolution, December 13, 1815.*

---

sec. 5 (ibid.); to secure a proper administrative examination of accounts sent to him in accordance with the provisions of the act of July 31, 1894 (28 Stat. L., 211); to carry out the provisions of the act of March 29, 1894 (28 Stat. L., 47), in relation to property returns, etc.

Regulations may be divided into different classes with respect to the question of the power of the person making the regulation to authorize an exception to it. There are, or may be, those which have received the sanction of Congress, and it is evident that the Secretary of War would have no authority to make an exception to one of these. There are also those that are made pursuant to and in aid of a statute. These may be modified, but until this is done are binding as well on the authority that made them as on others. U. S. *v.* Barrows, 1 Abbott, 351.

There is also a large body of other regulations emanating from and depending solely on the authority of the President as Commander in Chief. With reference to such regulations it has, I believe, been sometimes claimed that the same rule should be applied to them that is applied to the regulations made pursuant to statute. But this has not been done in practice, and I do not think that it should be done, for the reason that it would seem to be an unnecessary, embarrassing, and perhaps unconstitutional limitation of the authority of the President as Commander in Chief. Opin. J. A. Gen., March 5, 1896.

HISTORICAL NOTE.

The first volume of Army Regulations, using that term in the sense in which it is now understood, was issued to the Army on May 1, 1813, under the authority conferred by the act of March 3 of that year.

From March 29, 1779, until May 1, 1813, the "Regulations for the Order and Discipline of the Troops of the United States" were in force. They were prepared by Major-General Baron Steuben, the Inspector-General of the Army during the latter part of the war of the Revolution, and consisted in great part of matter which would now be properly termed drill regulations. The work was first printed at Worcester, Mass., in 1778, and was formally approved and adopted by Congress on March 29, 1779. The last edition of the Steuben regulations appeared in 1809, and it continued in use as a drill book after it had ceased to have authority as a volume of army regulations. In 1808 a small volume was published, apparently with the sanction of the War Department, containing the Articles of War which had been enacted in 1806, to which were added such military laws as were then in force.

Section 5 of the act of March 3, 1813 (2 Stat. L., 819), required the Secretary of War to prepare general regulations which, "when approved by the President of the United States, shall be respected and obeyed until altered or revoked by the same authority." The volume of regulations issued in pursuance of this authority was entitled "Military laws and rules and regulations for the armies of the United States," and was approved by the President on May 1, 1813. It contained the Articles of War of 1806, together with the statutes relating to the military establishment and a small number of regulations, properly so called. Editions of this work were published in 1814 and 1815, the latter, however, without the authority of the War Department.

The act of April 24, 1816 (3 Stat. L., 298), provided that the "regulations in force before the reduction of the Army be recognized as far as the same shall be found applicable to the service, subject, however, to such alterations as the Secretary of War may adopt, with the approbation of the President." In accordance with this

491. That the Secretary of War cause to be annually laid before this House a number of copies of the printed army list, equal to the number of members of the House. *House resolution, February 1, 1830.*

The same to be furnished annually to the House of Representatives.
House res. Feb. 1, 1830.

492. That there be annexed annually hereafter to the Army Register an accurate schedule of the pay and emoluments, with the commutation value thereof, to which the various officers of the Army of each grade are entitled *House resolution, August 30, 1842.*

Schedule of pay, etc.
House res. Aug. 30, 1842.

493. The highest volunteer rank which has been held by officers of the Regular Army shall be entered, with their names, respectively, upon the Army Register.

Volunteer rank, etc.
Sec. 1226, R. S.

---

legislation a volume of regulations was issued in September, 1816, and in January, 1820, a new edition containing the orders of the War Department issued since September, 1816.

Section 14 of the act of March 2, 1821 (3 Stat. L., 616), contained a provision that "the system of regulations prepared by Major-General Scott shall be, and the same are hereby, approved and adopted for the government of the Army of the United States and of the militia when in the service of the United States." These regulations were approved by President Monroe and published to the Army in July, 1821. On May 7, 1822, section 14 of the act of March 2, 1821, was formally repealed, thus withdrawing the legislative sanction which had been conferred by the statute above cited. As to this enactment Attorney-General Wirt advised that, "notwithstanding such repeal, the regulations having received the sanction of the President, continued in force by the authority of the President in all cases where they did not conflict with positive legislation." 1 Opin. Att. Gen., 549. The Regulations of 1821 were revised under the direction of General Scott and a new edition was issued on March 1, 1825, which continued in force until 1835.

A volume of General Regulations, compiled under the direction of Major-General Macomb, was printed and prepared for issue on September 1, 1835, but was not formally approved and promulgated until December 31, 1836. A second edition of this work, with some modifications, was issued in 1841, and a third edition, containing alterations and amendments, which have been promulgated in orders or taken from former volumes of regulations, was issued to the Army on May 1, 1847.

On January 1, 1857, a volume of Army Regulations, containing a number of important modifications, together with a general rearrangement of paragraphs and subject-matter, was prepared under the direction of Secretary Davis, and published with the approval of the President on January 1, 1857. This volume continued in force until August 10, 1861, when it was replaced by a revised edition; a second edition of this work was issued on June 25, 1863, containing the "changes and laws affecting Army Regulations and Articles of War."

The thirty-seventh section of the act of July 28, 1866 (14 Stat. L., 337), directed the Secretary of War "to have prepared and to report to Congress at its next session a code of regulations for the government of the Army and of the militia in actual service, which shall embrace all necessary orders and forms of a general character for the performance of all duties incumbent on officers and men in the military service, including rules for the government of courts-martial; the existing regulations to remain in force until Congress shall have acted on said report." No code of regulations having been submitted, Congress provided, in section 20 of the act of July 15, 1870 (16 Stat. L., 319), that "the Secretary of War shall prepare a system of general regulations for the administration of the affairs of the Army, which, when approved by Congress, shall be in force and obeyed until altered or revoked by the same authority, and said regulations shall be reported to Congress at its next session: *Provided*, That the said regulations shall not be inconsistent with the laws of the United States."

In conformity to this legislation a code of regulations, which had been prepared by a board of officers of which Inspector-General Marcy was the president, was submitted to the House of Representatives on February 17, 1873, and was by that body referred to the Committee on Military Affairs and ordered to be printed. No steps looking to their adoption were taken during the remainder of the session, and the Fifity-second Con-

Lineal rank, etc.

Sec. 2, June 18, 1878, v. 20, p. 149.

494. In every Official Army Register hereafter issued the lineal rank of all officers of the line of the Army shall be given separately for the different arms of the service; and if the officer be promoted from the ranks, or shall have served in the Volunteer Army, either as an enlisted man or officer, his service as a private and noncommissioned officer shall be given, and in addition thereto the record of his service as volunteer. *Sec. 2, act of June 18, 1878* (*20 Stat. L., 149*).

---

gress adjourned without action. The question was taken up by the Military Committee of the House of Representatives in the Forty-third Congress, and the proposition of adopting a code of Army Regulations was carefully considered. The conclusion reached by the committee was that the power to make and amend or alter regulations had best be left to Executive discretion. To that end a recommendation was submitted, which was adopted by Congress and approved by the President on March 1, 1875 (18 Stat. L., 337). This enactment repealed section 20 of the act of July 15, 1870, and authorized the President "to make and publish regulations for the government of the Army in accordance with existing laws."

Section 2 of the act of June 23, 1879 (21 Stat. L., 34), authorized and directed the Secretary of War "to cause all the regulations now in force to be codified and published to the Army," and provided that the expense attending the publication of the work should be defrayed from the appropriation for the contingent expenses of the Army for the current fiscal year. Under the authority thus conferred the Regulations of 1881 were prepared and issued to the Army, the order of promulgation bearing date February 17, 1881. A revision and condensation of this volume was issued by the Secretary of War on February 9, 1889. The Regulations now in force became effective on October 31, 1895, having received Executive approval on that date.

CHAPTER XI.

THE MILITARY ESTABLISHMENT[1]—GENERAL PROVISIONS OF ORGANIZATION.

THE MILITARY FORCES OF THE UNITED STATES.

COMPOSITION.

THE REGULAR ARMY—THE VOLUNTEER ARMY—THE MILITIA.[2]

Par.
495–498. Composition.
499–508. The permanent establishment.
509–514. The war establishment.
515–516. Increase of 1899.
517–528. The Volunteer Army.

Par.
529–534. Tactical organizations.
535–542. Disbandment.
543–554. The Volunteer Army of 1899. General officers, aids, and military secretaries.

COMPOSITION.

Par.
495. The national forces.
496. Composition.
497. The Regular Army.
498. The Volunteer Army.
499. The Regular Army.
500. Composition.
501. Native troops, Philippine Islands.

Par.
502. The same, officers.
503. The same, pay and allowances.
504. The same, enlisted men.
505. The Porto Rican regiment.
506. Indian scouts.
507, 508. Enlisted strength of the Army, restriction.

The national forces.
Apr. 22, 1898, s. 1, v. 30, p. 361.

495. All able-bodied male citizens of the United States, and persons of foreign birth who shall have declared their intention to become citizens of the United States under and in pursuance of the laws thereof, between the ages of eighteen and forty-five years, are hereby declared to constitute the national forces, and, with such exceptions and under such conditions as may be prescribed by law, shall be liable to perform military duty in the service of the United States. *Sec. 1, act of April 22, 1898* (*30 Stat. L., 361*).

Composition.
Apr. 22, 1898, s. 2, v. 30, p. 361.

496. The organized and active land forces of the United States shall consist of the Army of the United States and of the militia of the several States when called into the service of the United States:[2] *Provided*, That in time of war the Army shall consist of two branches which shall be designated, respectively, as the Regular Army and the Volunteer Army of the United States.[1] *Sec. 2, ibid.*

---

[1] For a note respecting the statutory history of the military establishment, see the end of chapter.

[2] For statutes respecting the militia, see chapter XXXV, *post*.

The Regular Army.
Apr. 22, 1898, s. 3, v. 30, p. 361.

497. The Regular Army is the permanent military establishment, which is maintained both in peace and war according to law.[2] *Sec. 3, ibid.*

The Volunteer Army.
Apr. 22, 1898, s. 4, v. 30, p. 361.

498. The Volunteer Army shall be maintained only during the existence of war, or while war is imminent, and shall be raised and organized, as in this act provided, only after Congress has or shall have authorized the President to raise such a force or to call into the actual service of the United States the militia of the several States: *Provided*, That all enlistments for the Volunteer Army shall be for a term of two years, unless sooner terminated, and that all officers and men composing said army shall be discharged from the service of the United States when the purposes for which they were called into service shall have been accomplished, or on the conclusion of hostilities.[3] *Sec. 4, ibid.*

THE PERMANENT ESTABLISHMENT.

THE REGULAR ARMY.

The Regular Army.
Apr. 22, 1898, s. 3, v. 30, p. 361.

499. The Regular Army is the permanent military establishment, which is maintained both in peace and war according to law. *Sec. 3, act of April 22, 1898 (30 Stat. L. 361).*

Composition.

500. From and after the approval of this act the Army of the United States, including the existing organizations, shall consist of:

Feb 2, 1901, v. 31, p. 748.
Sec. 1094 R. S.

Fifteen regiments of cavalry.
A corps of artillery.
Thirty regiments of infantry.
One Lieutenant-General.

---

[1] The invariable policy of the Government has been to consider the military forces as falling into two classes: Those who were soldiers or sailors by profession, irrespective of the national exigency, who took war when it came, and, if they survived it, continued to make military occupation the business of their lives; second, those who left their ordinary avocations at the outbreak of or during the continuance of hostilities and enlisted with the expectation of serving only so long as the exigency continued. Cleary *v.* U. S., 35 Ct. Cls., 207, 211.

[2] For the composition and organization of the Regular Army, see paragraphs 499 to 508, post; see also the chapters entitled, respectively, STAFF DEPARTMENTS and THE TROOPS OF THE LINE. For the war organization of the Regular Army, see paragraphs 509 to 514, post.

[3] For organization, composition, etc., of the volunteer armies see act of April 21, 1898 (30 Stat. L., 361); for composition and organization of the volunteer forces authorized by the act of March 2, 1899, see paragraphs 543 to 554, post.

Six major-generals.
Fifteen brigadier-generals.
An Adjutant-General's Department.
An Inspector-General's Department.
A Quartermaster's Department.[1]
A Subsistence Department.[2]
A Pay Department.
A Medical Department.[3]
A Corps of Engineers.[4]
An Ordnance Department.[5]
A Signal Corps.[6]
The officers of the Record and Pension Office.
The Chaplains.
The officers and enlisted men of the Army on the retired list.
The professors, the Corps of Cadets, the Army Detachments, and band of the Military Academy.
Indian Scouts, as now authorized by law; and such other officers and men as may hereinafter be provided for. *Act of February 2, 1901 (31 Stat. L., 748).*

NATIVE TROOPS—TROOPS IN THE PHILIPPINE ISLANDS.

Troops in the Philippine Islands. Organization.
Feb. 2, 1901, s. 36, v. 31, p. 757.

501. That when in his opinion the conditions in the Philippine Islands justify such action the President is authorized to enlist natives of those islands for service in the Army, to be organized as scouts, with such officers as he shall deem necessary for their proper control, or as troops or companies, as authorized by this act, for the Regular Army. The President is further authorized, in his discretion, to form companies, organized as are companies of the Regular Army, in squadrons or battalions, with officers and noncommissioned officers corresponding to similar organizations in the cavalry and infantry arms. The total number of enlisted men in said native organizations shall not exceed twelve thousand, and the total enlisted force of the line of the Army, together with such native force, shall not exceed at any one time one hundred thousand. *Sec. 36, act of February 2, 1901 (31 Stat. L., 757).*

---

[1] Including a force of post quartermaster-sergeants and detachment of army service men at the Military Academy.
[2] Including a force of post commissary-sergeants.
[3] Including the Hospital Corps and the nurse corps (female).
[4] Including a band and three battalions of engineer soldiers.
[5] Including a corps of ordnance sergeants and a force of enlisted men of ordnance.
[6] Including an enlisted force of sergeants, corporals, and privates.

The same. Officers. *Ibid.*

502. The majors to command the squadrons and battalions shall be selected by the President from captains of the line of the Regular Army, and while so serving they shall have the rank, pay, and allowances of the grade of major. The captains of the troops or companies shall be selected by the President from the first lieutenants of the line of the Regular Army, and while so serving they shall have the rank, pay, and allowances of captain of the arm to which assigned. The squadron and battalion staff officers, and first and second lieutenants of companies, may be selected from the noncommissioned officers or enlisted men of the Regular Army of not less than two years' service, or from officers or noncommissioned officers or enlisted men serving, or who have served, in the volunteers subsequent to April twenty-first, eighteen hundred and ninety-eight, and officers of those grades shall be given provisional appointments for periods of four years each, and no such appointments shall be continued for a second or subsequent term unless the officer's conduct shall have been satisfactory in every respect. *Ibid.*

The same. Pay and allowances. *Ibid.*

503. When, in the opinion of the President, natives of the Philippine Islands shall, by their services and character, show fitness for command, the President is authorized to make provisional appointments to the grades of second and first lieutenants from such natives, who, when so appointed, shall have the pay and allowances to be fixed by the Secretary of War, not exceeding those of corresponding grades of the Regular Army. *Ibid.*

The same. Enlisted men. *Ibid.*

504. The pay and allowances of provisional officers of native organizations shall be those authorized for officers of like grades in the Regular Army. The pay, rations, and clothing allowances to be authorized for the enlisted men shall be fixed by the Secretary of War, and shall not exceed those authorized for the Regular Army. *Ibid.*

THE PORTO RICAN REGIMENT.

Porto Rican regiment. Organization. Feb. 2, 1901, s. 37 v. 31, p. 758.

505. The President is authorized to organize and maintain one provisional regiment of not exceeding three battalions of infantry, for service in Porto Rico, the enlisted strength thereof to be composed of natives of that island as far as practicable. The regiment shall be organized as to numbers as authorized for infantry regiments of the Regular Army. The pay, rations, and clothing allowances to be authorized for the enlisted men shall be fixed by the Secretary of War, and shall not exceed those authorized for the Regular Army. The field officers shall be selected from officers of the next lower grades in the Regular Army and shall, while so serving in the higher grade, have the rank, pay, and allowances thereof. The company and regimental and battalion staff officers shall be appointed by the President. The President may, in his discretion, continue with their own consent the volunteer officers and enlisted men of the Porto Rico regiment, whose terms of service expire by law July first, nineteen hundred and one. Enlistments for the Porto Rico regiment shall be made for periods of three years, unless sooner discharged. The regiment shall be continued in service until further directed by Congress. *Sec. 37, act of February 2, 1901* (*31 Stat. L., 758*).

INDIAN SCOUTS.

Indian scouts.
July 28, 1866, s. 2, v. 16, p. 317; Aug. 12, 1876, v. 19, p. 131.
Sec. 1112, R.S.

506. The President is authorized to enlist a force of Indians, not exceeding one thousand, who shall act as scouts in the Territories and Indian country. They shall be discharged when the necessity for their service shall cease, or at the discretion of the department commander. A proportionate number of noncommissioned officers may be appointed. And the scouts, when they furnish their own horses and horse equipments, shall be entitled to receive forty cents per day for their use and risk so long as thus employed.[1] *Act of August 12, 1876* (*19 Stat. L., 131*).

ENLISTED STRENGTH OF THE ARMY.

Maximum strength.
Feb. 2, 1901, s. 36 v. 31, p. 757.

507. The total enlisted force of the line of the Army, together with such native force, shall not exceed, at any one time, one hundred thousand.[2] *Sec. 36, act of February 2, 1901* (*31 Stat. L., 757*).

The same.
Sec. 30, *ibid.*

508. The President is authorized to maintain the enlisted force of the several organizations of the Army at their maximum strength, as fixed by this act, during the present exigencies of the service, or until such time as Congress may hereafter otherwise direct.[1] *Sec. 30, act of February 2, 1901 (31 Stat. L., 756).*

---

[1] The act of July 24, 1876 (19 Stat. L., 97), which limited the number of Indian scouts to be employed to 300 was repealed by the act of August 12, 1876 (ibid., 131).

[2] The acts of June 1, 1874 (18 Stat. L., 73), March 3, 1875 (ibid., 452), July 24, 1876 (19 Stat. L., 77), November 21, 1877 (20 Stat. L., 2), and June 18, 1878 (ibid., 146), contained a provision limiting the number of enlisted men in the Army to 25,000, including hospital stewards and Indian scouts. The act of June 29, 1879 (21 Stat. L., 30), contained the requirement "that no money appropriated by this act shall be paid for recruiting the Army beyond the number of 25,000 enlisted men, including Indian scouts and hospital stewards; and thereafter there shall be no more than 25,000 enlisted men in the Army at any one time, unless otherwise authorized by law." This provision was repeated in the acts of May 4, 1880 (21 Stat. L., 110), February 24, 1881 (ibid., 346), June 30, 1882 (22 Stat. L., 117), March 3, 1883 (ibid., 456), July 5, 1884 (23 Stat. L., 107), and March 3, 1885 (ibid., 357). The act of March 1, 1887 (24 Stat. L., 435), which provided that the enlisted force of the Hospital Corps should be in excess of the strength authorized by law, was expressly repealed by the act of

THE WAR ESTABLISHMENT.

THE REGULAR ARMY—THE VOLUNTEER ARMY.

THE REGULAR ARMY.

Par.
509. Increase in strength of troops, companies, and batteries.
510. Batteries in time of war.
511. Increase in second lieutenants.
Par.
512. Pay of enlisted men in time of war.
512. Pay of officers for increased commands.
513. Reduction of war establishment.

Increase in companies, etc. April 26, 1898, s. 2, v. 30, p. 364.

509. Upon a declaration of war[2] by Congress, or declaration of Congress that war exists, the enlisted strength of a company, troop, and battery, respectively, may, in the discretion of the President, be increased to comprise not exceeding:[3]

For each company of infantry: One first sergeant, one quartermaster-sergeant, four sergeants, twelve corporals, two musicians, one artificer, one wagoner, and eighty-four privates; total enlisted, one hundred and six.

For each troop of cavalry: One first sergeant, one quartermaster-sergeant, six sergeants, eight corporals, two farriers and blacksmiths, two trumpeters, one saddler, one wagoner, seventy-eight privates; total enlisted, one hundred.

March 8, 1898 (30 Stat L., 261), which fixed the enlisted strength of the Army at 26,610.

[1] Sections 6 and 7 of the act of July 29, 1861 (12 Stat. L., 279), increasing the military establishment, declared such increase to be for the period of the existing rebellion, and, unless otherwise ordered by Congress, required the military establishment to be reduced to a number not exceeding 25,000 men, "within one year after the constitutional authority of the Government of the United States shall be reestablished, and organized resistance to such authority shall no longer exist." Section 7 of the act of April 26, 1898 (30 Stat. L., 365), and section 15 of the act March 2, 1899 (ibid., 981), contained similar requirements.

[2] By the act of April 25, 1898, war was formally declared to exist with the Kingdom of Spain. The following is the text of the declaration: "First. That war be, and the same is hereby, declared to exist, and that war has existed since the twenty-first day of April, anno Domini eighteen hundred and ninety-eight, including said day, between the United States of America and the Kingdom of Spain.

"Second. That the President of the United States be, and he hereby is, directed and empowered to use the entire land and naval forces of the United States, and to call into the actual service of the United States the militia of the several States, to such extent as may be necessary to carry this act into effect." Act of April 25, 1898.

[3] Under the authority conferred by this statute a third battalion was established by the President in each of the infantry regiments of the Regular Army on April 26, 1898. General Orders 27 and 32, A. G. O., 1898. The companies of cavalry, artillery, and infantry were ordered to be recruited to the war strength authorized by the act of April 26, 1898, by G. O. 27, A. G. O. of 1898. The three-battalion organization having been adopted for the infantry of the permanent establishment by section 10 of the act of February 2, 1901 (30 Stat. L., 750), the authority conferred by section 2, act of April 26, 1898, has ceased to be operative.

For each battery of heavy artillery: One first sergeant, twenty-two sergeants, ten corporals, two musicians, two artificers, one wagoner, one hundred and sixty-two privates; total enlisted, two hundred.

For each battery of field artillery: One first sergeant, one quartermaster-sergeant, one veterinary sergeant, six sergeants, fifteen corporals, two farriers, two artificers, one saddler, two musicians, one wagoner, one hundred and forty-one privates; total enlisted, one hundred and seventy-three.

For each company of engineers: One first sergeant, ten sergeants, ten corporals, ten musicians, sixty-four first-class privates, sixty-three second-class privates; total enlisted, one hundred and fifty. In time of war there shall be added to the Signal Corps of the Army ten corporals, one hundred first-class privates, and forty second-class privates, who shall have the pay and allowances of engineer troops of the same grade. *Sec. 2, act of April 26, 1898 (30 Stat. L., 364).*

Batteries in time of war. Sec. 5, *ibid.*

510. In time of war the President shall cause the batteries of artillery authorized by law to be organized as heavy or field artillery, as in his judgment the exigencies of the service may require. *Sec. 5, ibid.*

Increase in second lieutenants. Sec. 4, *ibid.*

511. When recruited to their war strength the President may add one second lieutenant to each battery of artillery; such offices to be filled by appointments, as prescribed by existing law. *Sec. 4, ibid.*

PAY AND ALLOWANCES.

Pay of enlisted men in time of war. Sec. 6, *ibid.*

512. In time of war the pay proper of enlisted men shall be increased twenty per centum over and above the rates of pay as fixed by law: *Provided*, That in war time no additional increased compensation shall be allowed to soldiers performing what is known as extra or special duty: *Provided further*, That any soldier who deserts shall, besides incurring the penalties now attaching to the crime of desertion, forfeit all right to pension which he might otherwise have acquired. *Sec. 6, ibid.*

Pay of officers for increased command. Sec. 7, *ibid.*

513. In time of war every officer serving with troops operating against an enemy who shall exercise, under assignment in orders issued by competent authority, a command above that pertaining to his grade, shall be entitled to receive the pay and allowances of the grade appropriate to the command so exercised: *Provided*, That a rate of pay exceeding that of a brigadier-general shall not be paid in any case by reason of such assignment. *Sec. 7, ibid.*

REDUCTION OF WAR ESTABLISHMENT.

514. At the end of any war in which the United States may become involved the Army shall be reduced to a peace basis by the transfer in the same arm of the service or absorption by promotion or honorable discharge under such regulations as the Secretary of War may establish of supernumerary commissioned officers and the honorable discharge or transfer of supernumerary enlisted men; and nothing contained in this act shall be construed as authorizing a permanent increase in the commissioned or enlisted force of the Regular Army beyond that now provided by the law in force prior to the passage of this act, except as to the increase of twenty-five majors provided for in section one hereof. *Sec. 7, ibid.*

INCREASE OF 1899.[1]

Temporary increase March 2, 1899, s. 12, v. 30, p. 979.

515. To meet the present exigencies of the military service the President is hereby authorized to maintain the Regular Army at a strength of not exceeding sixty-five thousand enlisted men, to be distributed amongst the several branches of the service, including the Signal Corps, according to the needs of each.[2] *Sec. 12, act of March 2, 1899 (30 Stat. L., 979).*

---

[1] For the volunteer establishment authorized by the act of March 2, 1899 (30 Stat. L., 979), see paragraphs 543 to 554, *post.*

[2] Under the authority conferred by this section the following distribution of enlisted men was authorized by the President. See G. O. 37, A. G. O., 1899:

CAVALRY.

12 troops of 100 enlisted men each	1,200
Regimental and squadron noncommissioned staff	6
Regimental band	28
Total number of enlisted men in regiment	1,234
Number of regiments	10
Total number of enlisted men in cavalry	12,340

Each troop of cavalry shall consist of—
1 first sergeant.
1 quartermaster-sergeant.
6 sergeants.
8 corporals.
2 cooks.
2 farriers and blacksmiths.
1 saddler.
1 wagoner.
2 trumpeters.
76 privates.
100

ARTILLERY.

12 batteries of heavy artillery, 120 enlisted men each	1,440
2 batteries of field artillery, 120 enlisted men each	240
Regimental noncommissioned staff	2
Regimental band	28
Total number of enlisted men in regiment	1,710
Number of regiments	7
Total number of enlisted men in artillery	11,970

516. Such increased regular * * * force shall continue in service only during the necessity therefor, and not later than July first, nineteen hundred and one. *Ibid.*

Discharge of increased force. *Ibid.*

[Footnote [2]—Continued.]

Each battery of heavy artillery shall consist of—
1 first sergeant.
1 quartermaster-sergeant.
8 sergeants.
12 corporals.
2 musicians.
2 mechanics.
2 cooks.
92 privates.
120

Each battery of field artillery shall consist of—
1 first sergeant.
1 stable sergeant.
1 quartermaster-sergeant.
6 sergeants.
12 corporals.
4 artificers.
2 musicians.
2 cooks.
91 privates.
120

INFANTRY.

12 companies of 112 enlisted men each	1,344
Regimental and battalion noncommissioned staff	6
Regimental band	28
Total number of enlisted men in regiment	1,378
Number of regiments	25
Total number of enlisted men in infantry	34,450

Each company of infantry shall consist of—
1 first sergeant.
1 quartermaster-sergeant.
4 sergeants.
12 corporals.
2 cooks.
2 musicians.
1 artificer.
89 privates.
112

Battalion of engineers	752
Total line of the Army	59,512

STAFF DEPARTMENTS, ARMY SERVICE DETACHMENT, ETC.

U. S. Military Academy, General Army Service, cavalry detachment, field musicians and band		250
Signal Corps, 720, organized as follows:		
100 first-class sergeants.		
200 sergeants.		
50 corporals.		
300 first-class privates.		
50 second-class privates.		
20 cooks.		720
Hospital Corps, 2,600, organized as follows:		
Hospital stewards	175	
Acting hospital stewards	325	
Privates	2,100	
		2,600
Ordnance Department		605
Commissary-sergeants		100
Post quartermaster-sergeants		105
Electrician sergeants		75
Indian scouts		75
Recruiting parties, recruits, etc		500
Total staff, etc		5,030
Line of the Army		59,512
Total		64,542

THE VOLUNTEER ARMY.

ORGANIZATION AND RECRUITMENT.

Par.
517. Apportionment.
518. The same, organization.
519. Medical staff.
520. Militia organizations, officers.
521. Appointment of officers.
522. Examining boards.
523. Acceptance of militia organizations.
524. Term of enlistment.
525. Recruitment.
526. Returns and muster rolls.
527. Pay and allowances.
528. The same.

Organization and apportionment. Apr. 22, 1898, s. 5, v. 30, p. 361.

517. When it becomes necessary to raise a volunteer army, the President shall issue his proclamation stating the number of men desired, within such limits as may be fixed by law, and the Secretary of War shall prescribe such rules and regulations, not inconsistent with the terms of this Act, as may in his judgment be necessary for the purpose of examining, organizing, and receiving into service the men called for: *Provided*, That all men received into service in the Volunteer Army shall, as far as practicable, be taken from the several States and Territories and the District of Columbia and the Indian Territory in proportion to their population. And any company, troop, battalion, or regiment from the Indian Territory shall be formed and organized under such rules and regulations as shall be prescribed by the Secretary of War.[1] *Sec. 5, act of April 22, 1898 (30 Stat. L., 361).*

Organization. Sec. 6, *ibid.*

518. The Volunteer Army and the militia of the States when called into service of the United States shall be organized under, and shall be subject to, the laws, orders, and regulations governing the Regular Army. *Section 6, ibid.*

---

[1] Under the authority conferred by the acts of April 20 and April 22, 1898, and in pursuance of the declaration of war with the Kingdom of Spain contained in the act of April 25, 1898, a call was addressed to the governors of the several States for a force of 125,000 volunteers. G. O. 30, A. G. O. 1898. For regulations respecting the enrollment, armament, and equipment of the volunteer forces thus called into the service of the United States, see General Orders 26, 31, 33, and 41, A. G. O. of 1898.

Section 6 of the act of April 22, 1898, conferred authority upon the President "to organize companies, troops, battalions, or regiments, possessing special qualifications, from the nation at large, not to exceed three thousand men, under such rules and regulations, including the appointment of the officers thereof, as may be prescribed by the Secretary of War." The act of May 11, 1898 (30 Stat. L., 405), authorized the organization of "a volunteer brigade of engineers from the nation at large, to consist of not more than three regiments and not more than three thousand five hundred men, possessing the special qualifications necessary for engineer troops, under such rules and regulations, including the appointment of the officers thereof, as may be prescribed by the Secretary of War." By the same enactment the organization of "an additional volunteer force of not exceeding ten thousand enlisted men possessing immunity from diseases incident to tropical climates" was also authorized. The officers of these forces were to be appointed by the President with the advice and consent of the Senate, and they were not apportioned among the States and Territories, as required in section 5 of the act of April 22, 1898. The act of May 18, 1898 (30 Stat. L., 418), authorized the formation of a volunteer signal corps. This statute contained the requirement that "two-thirds of all officers below the rank of major and a like proportion of the enlisted men shall be skilled electricians or telegraph operators."

Medical staff. *Ibid.*

519. Each regiment of the Volunteer Army shall have one surgeon, two assistant surgeons, and one chaplain, and all the regimental and company officers shall be appointed by the governors of the States in which their respective organizations are raised. *Ibid.*

Militia organizations, officers. *Ibid.*

520. When the members of any company, troop, battery, battalion, or regiment of the organized militia of any State shall enlist in the Volunteer Army in a body, as such company, troop, battery, battalion, or regiment, the regimental, company, troop, battery, and battalion officers in service with the militia organization thus enlisting may be appointed by the governors of the States and Territories, and shall when so appointed be officers of corresponding grades in the same organization when it shall have been received into the service of the United States as a part of the Volunteer Army. *Ibid.*

Appointment. Retention of Regular Army rank.

521. The governor of any State or Territory may, with the consent of the President, appoint officers of the Regular Army in the grades of field officers in organizations of the Volunteer Army, and the President may appoint officers of the Regular Army in the grade of field officers in organizations of the Volunteer Army raised in the District of Columbia and the Indian Territory, and in the regiments possessing special qualifications, provided for in section six of an act of Congress approved April twenty-second, eighteen hundred and ninety-eight, and in section two of the act of Congress approved May eleventh, eighteen hundred and ninety-eight; and officers thus appointed shall be entitled to retain their rank in the Regular Army: *Provided*, That not more than one officer of the Regular Army shall hold a commission in any one regiment of the Volunteer Army at the same time: *And provided further*, That officers so appointed shall be entitled to receive only the pay and allowances of their rank in the volunteer organization.[1] *Sec. 2, act of May 28, 1898 (30 Stat. L., 421).*

Limit for each volunteer regiment.

Pay.

May 28, 1898, s. 2, v. 30, p. 421.

Military boards to determine efficiency of officers. Apr. 22, 1898, s. 14, v. 30, p. 304.

522. The general commanding a separate department or a detached army is authorized to appoint from time to time military boards of not less than three nor more than five Volunteer officers of the Volunteer Army to examine

---

[1] But see section 12, act of April 26, 1898, paragraph 553, post.

into the capacity, qualifications, conduct, and efficiency of any commissioned officer of said army within his command: Rank of members of board. *Provided*, That each member of the board shall be superior in rank to the officer whose qualifications are to be inquired Adverse report into: *And provided further*, That if the report of such a board is adverse to the continuance of any officer, and the report be approved by the President, such officer shall be discharged from service in the Volunteer Army, at the discretion of the President, with one month's pay and allowances. *Sec. 14, act of April 22, 1898 (30 Stat. L., 364).*

Militia organizations. April 26, 1898, s. 3, v. 30, p. 364.

523. In the event of a call by the President for either volunteers or the militia of the country the President is authorized to accept the quotas of troops of the various States and Territories, including the District of Columbia and Indian Territory, as organized under the laws of the States and Territories, including the District of Columbia, in companies, troops, and batteries, each to contain so far as practicable the number of enlisted men authorized in this act for each arm of the service, and battalions of not less than three such companies and regiments of not less than ten nor more than twelve such companies. But this proviso shall apply to companies, troops, batteries, battalions, and regimental organizations and none other: *Provided further*, That in volunteer organizations received into the service under this act and existing laws, one hospital steward shall be authorized for each battalion. *Sec. 3, act of April 26, 1898.*

Term of enlistment. Sec. 4, *ibid.*

524. All enlistments for the Volunteer Army shall be for a term of two years, unless sooner terminated. *Sec. 4, ibid.*

Recruitment. Sec. 7, *ibid.*

525. All organizations of the Volunteer Army shall be so recruited from time to time as to maintain them as near to their maximum strength as the President may deem necessary, and no new organization shall be accepted into service from any State unless the organizations already in service from such State are as near to their maximum strength of officers and enlisted men as the President may deem necessary. *Sec. 7, ibid.*

RETURNS AND MUSTER ROLLS.

Returns and rolls. Sec. 8, *ibid.*

526. All returns and muster rolls of organizations of the Volunteer Army and of militia organizations while in the service of the United States shall be rendered to the Adjutant-General of the Army, and upon the disbandment of such organizations the records pertaining to them shall be transferred to and filed in the Record and Pension Office of the War Department. And regimental and all other medical officers serving with volunteer troops in the field or elsewhere shall keep a daily record of all soldiers reported sick or wounded, as shown by the morning calls or reports, and shall deposit such reports with other reports provided for in this section with the Record and Pension Office, as provided herein for other reports, returns, and muster rolls. *Sec. 8, ibid.*

PAY AND ALLOWANCES.

527. All officers and enlisted men of the Volunteer Army, and of the militia of the States when in the service of the United States, shall be in all respects on the same footing as to pay, allowances, and pensions as that of officers and enlisted men of corresponding grades in the Regular Army. *Sec. 12, ibid.*

Pay and allowances.
Sec. 12, *ibid.*

528. The pay and allowance of such of the volunteers as are received into the service of the United States under the Act of Congress approved April twenty-second, eighteen hundred and ninety-eight, and the acts supplemental thereto, shall be deemed to commence from the day on which they joined for duty and are enrolled at the battalion, regimental, or State rendezvous. *Act of May 26, 1898 (30 Stat. L., 424).*

Pay of volunteers between enrollment and muster.
May 26, 1898, v. 30, p. 424.

TACTICAL ORGANIZATIONS, STAFF OFFICERS.

Par.
529. Corps, divisions, brigades.
530. Staff, army corps.
531. Staff, division and brigade.
532. The same termination of appointment.

Par.
533. Eligibility of regular officers.
534. Volunteer signal corps.

529. In time of war, or when war is imminent, the troops in the service of the United States, whether belonging to the Regular or Volunteer Army or to the militia, shall be organized, as far as practicable, into divisions of three brigades, each brigade to be composed of three or more regiments; and whenever three or more divisions are assembled in the same army the President is authorized to organize them into army corps, each corps to consist of not more than three divisions.[1] *Sec. 9, act of April 22, 1898 (30 Stat. L., 362).*

Corps, divisions, and brigades.
April 22, 1898, s. 9, v. 30, p. 362.

---

[1] Seven army corps were constituted by the President in G. O., 36, A. G. O., 1898. They are to be numbered, serially, from one to seven.

GENERAL STAFF OFFICERS.

Staff of army corps. Sec. 10, *ibid.*

530. The staff of the commander of an army corps shall consist of one assistant adjutant-general, one chief engineer, one inspector-general, one chief quartermaster, one chief commissary of subsistence, one judge-advocate, and one chief surgeon, who shall have, respectively, the rank of lieutenant-colonel; one assistant adjutant-general, who shall have the rank of captain, and the aids-de-camp authorized by law. *Sec. 10, ibid.*

Staff of division and brigade. *Ibid.*

531. The staff of the commander of a division shall consist of one assistant adjutant-general, one engineer officer, one inspector-general, one chief quartermaster, one chief commissary of subsistence, a chief signal officer,[1] and one chief surgeon, who shall have, respectively, the rank of major, and the aids-de-camp authorized by law. The staff of the commander of a brigade shall consist of one assistant adjutant-general, one assistant quartermaster, and one commissary of subsistence, each with the rank of captain; one surgeon, and the aids-de-camp authorized by law. *Sec. 10, ibid.*

532. The staff officers herein authorized for the corps, division, and brigade commanders may be appointed by the President, by and with the advice and consent of the Senate, as officers of the Volunteer Army, or may be assigned by him, in his discretion, from officers of the Regular Army, or the Volunteer Army, or of the militia in the service of the United States: *Provided*, That when relieved from such staff service said appointments or assignments shall terminate. *Sec. 10, ibid.*

Proviso. Termination of appointment.

The same. Eligibility of regular officers.

—not to terminate regular commission.

—pay.

—commissions of, in Volunteer Army.

533. Officers of the Regular Army shall be eligible for such staff appointments, and shall not be held to vacate their offices in the Regular Army by accepting the same, but shall be entitled to receive only the pay and allowances of their staff rank: *Provided further*, That officers of the Regular Army receiving commissions in regiments of engineers, or any other commissions in the Volunteer Army, shall not be held to vacate their offices in the Regular Army by accepting the same, but shall be entitled to receive only the pay and allowances of such volunteer rank while serving as such. *Act of May 28, 1898 (30 Stat. L., 421).*

May 28, 1898, v. 30, p. 421.

Volunteer signal corps.

534. The volunteer signal corps shall consist of one colonel, one lieutenant-colonel, one major as disbursing

---

[1] Joint resolution No. 57, July 8, 1898 (30 Stat. L., 752).

officer, and such other officers and men as may be required, not exceeding one major for each army corps, and two captains, two first lieutenants, two second lieutenants, five first-class sergeants, ten sergeants, ten corporals, and thirty first-class privates to each organized division of troops. *Sec. 2, act of May 28, 1898 (30 Stat. L., 417).*

DISBANDMENT OF THE VOLUNTEER ARMY.

Par.
535. Discharge of volunteers.
536. Extra pay on discharge.
537, 538, 539. The same, payment to heirs.
Par.
540. Property, accountability of discharged officers.
541. Travel pay on discharge by order.
542. Colors of volunteer regiments.

Discharge of volunteers.
Sec. 4, *ibid.*

535. All officers and men composing said army shall be discharged from the service of the United States when the purposes for which they were called into service shall have been accomplished, or on the conclusion of hostilities.[1] *Sec. 4, ibid. Act of April 22, 1898 (30 Stat. L., 364).*

EXTRA PAY ON DISCHARGE.

Extra pay on discharge.
Jan. 12, 1899, v. 30, p. 784.

536. In lieu of granting leaves of absence and furloughs to officers and enlisted men belonging to companies and regiments of United States Volunteers prior to muster out of the service, all officers and enlisted men belonging to volunteer organizations hereafter mustered out of the service who have served honestly and faithfully beyond the limits of the United States shall be paid two months' extra pay on muster out and discharge from the service, and all officers and enlisted men belonging to organizations hereafter mustered out of the service who have served honestly and faithfully within the limits of the United States shall be paid one month's extra pay on muster out and discharge from the service, from any money in the Treasury not otherwise appropriated: *Provided*, That the discharge of all officers and enlisted men from the volunteer service of the United States shall, as far as practicable, take effect on the date of the muster out of the organization to which they belong, and that regiments and other independent organizations shall be mustered out at camps within the limits of the United States or at the rendezvous of the State, regiment, or independent organization.[1] *Act of January 12, 1899 (30 Stat. L., 784).*

---

[1] The invariable policy of the Government has been to consider the military forces as falling into two classes—those who were soldiers or sailors by profession, and those who entered the service for the exigency only. To this latter class—to those who have been discharged when the war ended—Congress have always and repeatedly given this same gratuity of two months additional pay to help the men through the interval between their discharge and the resumption of their avocations in civil life. Cleary *v.* U. S., 35 Ct. Cls., 207, 211. See note to paragraph 496, *ante.*

The same. Mar. 3, 1899, v. 30, p. 1073.

537. All enlisted men in the Regular Army who enlisted subsequent to the declaration of war for the war only and mustered out of the service who have served honestly and faithfully beyond the limits of the United States shall be paid two months' extra pay on muster out and discharge from the service, and all enlisted men in the Regular Army who enlisted subsequent to the declaration of war for the war only and mustered out of the service who have served honestly and faithfully within the limits of the United States shall be paid one month's extra pay on muster out and discharge from the service from any money in the Treasury not otherwise appropriated, said moneys to be immediately available. *Act of March 3, 1899 (30 Stat. L., 1073).*

The same. Payment to heirs. *Ibid.*

538. The act of January twelfth, eighteen hundred and ninety-nine, is hereby amended so as to authorize the payment to the legal heirs or representatives of the officers and enlisted men who died or were killed or who may die in the service the extra pay provided for in that act for officers and enlisted men who have been or are to be mustered out. *Ibid.*

The same. May 26, 1900, v. 31, p. 217.

539. The act approved January twelfth, eighteen hundred and ninety-nine, granting "extra pay to officers and enlisted men of the United States Volunteers," shall extend to all volunteer officers of the general staff who have not received waiting orders pay prior to discharge, at the rate of one month to those who did not serve beyond the limits of the United States and two months to those who served beyond the limits of the

---

[1] The term "service" as used in the act of January 12, 1899 (30 Stat. L., 784), which provides extra pay to officers and enlisted men of the United States Volunteers when "mustered out of service," means the military service of the United States, and does not apply to officers or enlisted men of the Regular Army who, on muster out as officers of volunteer organizations, return to duty in the Regular Army. V Comp. Dec., 529.

A soldier killed while running the guard did not serve "honestly and faithfully," within the meaning of the acts of January 12 and March 3, 1898, and his heirs are not entitled to the extra pay therein provided. VI, ibid., 794.

Service in the Philippine Islands and service in the Hawaiian Islands is service "beyond the limits of the United States" within the meaning of the act of January 12, 1899. VI Compt. Dec., 374, 379.

The extra pay allowed by the act of January 12, 1899, and the acts amendatory thereof, to officers and enlisted men of volunteers on their muster out of the military service, is not authorized in the case of an officer discharged on the adverse report of a board of officers convened under section 14 of the act of April 22, 1898 (ibid., 700); or in the case of a soldier discharged at his own request (ibid., 346); or in the case of an officer on furlough or while awaiting muster out (ibid., 42).

United States; and officers and enlisted men of volunteer organizations, who have served honestly and faithfully in the Volunteer Army of the United States during the war with Spain and have been honorably discharged without furlough, or by reason of their services being no longer required, or at any time by reason of wounds received, or disability contracted in the service and in the line of duty, and who have not received the extra pay granted in said act or in subsequent acts of Congress supplemental thereto: And this act shall be deemed to apply to officers of volunteers who resigned and enlisted men of volunteers who were discharged upon their own applications subsequent to the issue of orders for the muster out of their organizations and prior to the dates of muster out. *Act of May 26, 1900 (31 Stat. L., 217).*

PROPERTY ACCOUNTABILITY OF DISCHARGED OFFICERS.

Property accountability.
Jan. 12, 1899, s. 2, v. 30, p. 784.

540. Officers who at any time were accountable or responsible for public property shall be required, before final payment is made to them on discharge from the service, to obtain certificates of nonindebtedness to the United States from only such of the bureaus of the War Department to which the property for which they were accountable or responsible pertains, and the certificate from the Chief of the Division of Bookkeeping and Warrants, Treasury Department, and such certificates, accompanied by the affidavits of officers, of nonaccountability or nonresponsibility to other bureaus of the War Department, certified to by the commanding officer of the regiment or independent organization, shall warrant their final payment: *Provided*, That officers who have not been responsible at any time for public property shall be required to make affidavit of that fact, certified to by their commanding officers, which shall be accepted as sufficient evidence to warrant their final payment on their discharge from the service: *Provided further*, That mustering officers are empowered to administer oaths in all matters pertaining to the muster out of volunteers. *Sec. 2, act of January 12, 1899 (30 Stat. L., 784).*

Oath

TRAVEL PAY ON DISCHARGE BY ORDER.

Travel pay on discharge by order.
June 6, 1900, v. 31, p. 708.

541. When the Secretary of War, in the exercise of his discretion, has directed the discharge of any enlisted men of the regular or volunteer forces of the Army, and the orders or instructions directing such discharge stated that

such enlisted men were entitled to travel pay, such order or instruction shall be sufficient authority for the payment to the soldiers of the traveling allowances provided for by section twelve hundred and ninety of the Revised Statutes. And officers of the Pay Department of the Army shall have credit in the settlement of their accounts for all payments made in obedience to said orders or instructions of the Secretary of War: *Provided*, That soldiers discharged under such orders or instructions, which stated that such soldiers were entitled to travel pay, and who were absent by authority on the date of the muster out of their regiments or of discharge, are entitled to and will be paid traveling allowances from place of muster out of their regiments or the places designated in the final statements as the place of discharge to the place of enlistment or enrollment: *Provided further*, That the provisions of this act shall apply only to cases that have arisen or shall arise under orders or instructions for discharge with travel pay issued between April twenty-first, eighteen hundred and ninety-eight, and the date of the passage of this act: *Provided further*, That it shall not be held as applying to any case in which the order directing the discharge did not set forth that the soldier was entitled to travel pay. *Act of June 6, 1900 (31 Stat. L., 708).*

COLORS OF VOLUNTEER REGIMENTS.

Retention of colors.
Feb. 25, 1899, v. 30, p. 890.

542. That the Secretary of War be, and he is hereby, authorized to permit volunteer regiments, on being mustered out of the service of the United States, to retain all of their regimental colors. Said colors shall be turned over to the State authorities to which said regiments belong, and the regimental quartermaster in making his returns may, in lieu of said colors and in full release therefor, file with the proper official of the War Department a receipt from the quartermaster-general of said State that said colors have been delivered to said State authorities. *Act of February 25, 1899 (30 Stat. L., 890).*

THE VOLUNTEER ARMY OF 1899.

COMPOSITION AND ORGANIZATION.

Organization.
Mar. 2, 1899, s. 12, v. 30, p. 979.

543. To meet the present exigencies of the military service the President is hereby authorized to * * * raise a force of not more than thirty-five thousand volunteers to be recruited as he may determine from the country at large, or from the localities where their services are needed, without restriction as to citizenship or educational qualifications, and to organize the same into not more than twenty-seven regiments organized as are infantry regiments of war strength in the Regular Army, and three regiments to be composed of men of special qualifications in horsemanship and marksmanship, to be organized as cavalry for service mounted or dismounted. *Sec. 12, act of March 2, 1899 (30 Stat. L., 979).*

Regiment's surgeons. *Ibid.*

544. Each regiment shall have one surgeon, with the rank of major; two assistant surgeons, one of whom shall have the rank of captain and one that of first lieutenant, and three hospital stewards. *Ibid.*

ENLISTMENTS AND REENLISTMENTS.

Enlistments. *Ibid.*

545. All enlistments for the volunteer force herein authorized shall be for the term of two years and four months, unless sooner discharged. *Ibid.*

Transfers.

546. Enlisted men of volunteers who desire to remain in the military service, either in the Regular Army or the temporary force authorized by this act, may, if found qualified therefor, be transferred to and enlisted in such batteries, troops, or companies as may be below the maximum authorized strength, and when so transferred and enlisted shall be credited on their new enlistment with the periods of service rendered by them, respectively, as volunteers.[1] *Sec. 15, ibid.*

GENERAL OFFICERS.

General officers. Sec. 13, *ibid.*

547. The President shall have power to continue in service or to appoint, by and with the advice and consent of the Senate, brigadier-generals of volunteers, who, including the brigadier-generals of the Regular Army, shall not exceed one for every four thousand enlisted men actually in service, and major-generals of volunteers, who, including the major-generals of the Regular Army, shall not exceed one for every twelve thousand enlisted men: *Provided*, That Regular Army officers continued or appointed as general officers or as field or staff officers of volunteers, under the provisions of this act shall not vacate their Regular Army commissions: *And provided further*, That no general officers appointed under the provisions of this section shall be continued in service as such beyond July first, nineteen hundred and one. *Sec. 13, ibid.*

VOLUNTEER STAFF.

Staff: Composition. Sec. 14, *ibid.*

548. The President is hereby authorized to continue in service, or to appoint by and with the advice and consent of the Senate, officers of the volunteer staff as follows:

Three assistant adjutant-generals with the rank of lieutenant-colonel, and six assistant adjutant-generals with the rank of major.

Three inspectors-general with the rank of lieutenant-colonel, and six inspectors-general with the rank of major.

Five judge-advocates with the rank of major.

Thirty quartermasters with the rank of major, and forty assistant quartermasters with the rank of captain.

Six commissaries of subsistence with the rank of major, and twelve assistant commissaries of subsistence with the rank of captain.

Thirty-four surgeons with the rank of major.

Thirty additional paymasters with the rank of major.

Four signal officers with the rank of major, nine signal officers with the rank of captain, nine signal officers with the rank of first lieutenant, and nine signal officers with the rank of second lieutenant. *Sec. 14, ibid.*

The same. *Ibid.*

549. For each Regular Army officer of a staff corps or department who may be retained in or appointed to a higher volunteer rank in said staff corps or department than that actually held by him in the regular establishment, there may be appointed one officer of volunteers of the lowest grade mentioned in this section for such staff corps or department, but no appointment shall be made which will increase the total number of officers, Regular and Volunteer, serving in any grade, above the number authorized by this Act. *Ibid.*

Discharge. *Ibid.*

550. All the volunteer staff officers herein authorized to be appointed or retained in the service shall be honorably discharged on July first, nineteen hundred and one, or sooner if their services are no longer required. *Ibid.*

Appointment. *Ibid.*

551. All officers herein authorized shall be appointed by the President, by and with the advice and consent of the Senate. *Ibid.*

MUSTER-OUT AND DISCHARGE.

Method. Sec. 15, *ibid.*

552. The officers and enlisted men of the Volunteer Army shall be mustered out of the military service of the United

---

[1] Section 15 of the act of March 2, 1899, contained the requirement "that the President is authorized to enlist temporarily in service for absolutely necessary purposes in the Philippine Islands volunteers, officers, and men, individually or by organization, now in those islands and about to be discharged, provided their retention shall not extend beyond the time necessary to replace them by troops authorized to be maintained under the provisions of this act and not beyond a period of six months."

States and discharged as provided in the act of April twenty-second, eighteen hundred and ninety-eight.[1] *Sec. 15, ibid.*

Reduction. *Ibid.*

553. Each and every provision of this act shall continue in force until July first, nineteen hundred and one; and on and after that date all the general, staff, and line officers appointed to the Army under this act shall be discharged and the numbers restored in each grade to those existing at the passage of this act, and the enlisted force of the line of the Army shall be reduced to the number as provided for by a law prior to April first, eighteen hundred and ninety-eight, exclusive of such additions as have been, or may be, made under this act to the artillery, and except the cadets provided for by this act who may be appointed prior to July first, nineteen hundred and one: *And provided further*, That no officer who has been, or may be, promoted under existing law, or under the rules of seniority, shall be disturbed in his rank. *Ibid.*

Travel pay for certain regiments. Feb. 8, 1901, v. 31, p. 762.

554. Any officer of volunteers, and any enlisted man of either regulars or volunteers, who was discharged in the Philippine Islands and there reentered the service, through commission or enlistment, in the Thirty-sixth or Thirty-seventh Regiments United States Volunteer Infantry, or in the Eleventh Regiment United States Volunteer Cavalry, shall, when discharged, except by way of punishment for an offense, receive for travel allowances, from the place of his discharge to the place in the United States of his last preceding appointment or enlistment, four cents per mile: *Provided*, That for sea travel, on discharge, from or between our island possessions actual expenses only shall be paid to officers, and transportation and subsistence only shall be furnished enlisted men: *Provided further*, That officers and enlisted men discharged in the United States under the provisions of this act shall not be entitled to transportation or travel allowance back to the Philippine Islands. *Act of February 8, 1901 (31 Stat. L., 762).*

Historical note.—The military establishment at the organization of the Government under the Constitution contained no officer of higher rank than lieutenant-colonel. Authority was conferred by the act of March 3, 1791 (1 Stat. L., 222), to appoint a major-general and a brigadier-general, should the President deem that course necessary, and, by the act of March 28, 1792 (ibid., 246), the number of brigadier-generals was to be increased to four, if, in the opinion of the President, such appointments would "be conducive to the good of the public service." This authority was withdrawn, however, by section 3 of the act of May 30, 1796 (ibid., 483). The number of brigadier-generals was reduced to one, and the office of major-general was abolished by the act of March 3, 1797 (ibid., 507). The act of May 28, 1798 (ibid., 558), passed in contemplation of war with France, conferred authority upon the President to appoint a lieutenant-general and a suitable number of major-generals; by section 3 of the act of July 16, 1798 (ibid., 604), the number of major-generals so appointed was restricted to two, and the number of brigadier-generals to four. The grade of lieutenant-general was abolished and replaced by that of General of the Armies of the United States, by section 9 of the act of March 3, 1799 (ibid., 752). The difficulties with France having been put in the way of settlement, recruiting was suspended until the further order of Congress by the act of February 20, 1800 (2 ibid., 7); military appointments were authorized to be suspended by the act of May 14, 1800 (ibid., 85), and at the reduction of 1802, the number of general officers was reduced to one brigadier-general. Section 3, act of March 16, 1802, 2 ibid., 132.

---

[1] See paragraph 535, *ante.* For statutes conferring extra pay on officers and enlisted men of volunteers, on muster out or discharge, see acts of January 12, 1899 (30 Stat. L., 784), paragraphs 536 and 538, *ante;* March 3, 1899 (ibid., 1073), paragraph 537, *ante;* and May 26, 1900 (31 ibid., 217), paragraph 539, *ante.* For statutes regulating travel pay of enlisted men discharged by order of the Secretary of War see the act of June 6, 1900 (31 ibid., 708), paragraph 541, *ante.*

During the controversy with Great Britain which culminated in the war of 1812, the appointment of two additional brigadier-generals was authorized by section 3 of the act of April 12, 1808 (2 ibid., 481); by the act of December 24, 1811 (ibid., 669), the existing military establishment was ordered to be immediately completed, and by section 4 of the act of January 11, 1812 (ibid., 671), two major-generals and four brigadier-generals were authorized. By the act of February 24, 1813 (ibid., 801), six major-generals and six brigadier-generals were authorized in addition to those already in service. The act of March 3, 1815 (3 ibid., 224), fixing the military peace establishment, reduced the number of major-generals to two and the number of brigadier-generals to four; at the general reduction of 1821 these numbers were fixed at one and two, respectively (section 5, act of March 2, 1821, ibid., 615), at which number it remained until the outbreak of hostilities with Mexico in 1846. The act of May 13, 1846 (9 Stat. L., 9), providing for the prosecution of the existing war with Mexico, authorized the acceptance of 50,000 volunteers, and conferred power upon the President to organize the forces thus provided into divisions and brigades, and to apportion the general and staff officers among the respective States and Territories as he might deem proper. One major-general and two brigadier-generals, in addition to those already authorized by law, were added to the establishment by the act of June 13, 1846 (ibid., 17), with the proviso that the number of general officers was to be reduced to that existing at the outbreak of hostilities upon the termination of the war "by a definitive treaty of peace." With a view to determine the number of general officers to be appointed under the act of May 13, 1846, it was provided by the act of June 26, 1846 (ibid., 20), that brigades of volunteer troops should consist of not less than three regiments and divisions of not less than two brigades; and any reduction in the strength of the volunteer forces was to involve a corresponding reduction in the number of general officers, all of whom were to be mustered out at the close of the war. By the act of March 3, 1847 (ibid., 184) two major-generals and three brigadier-generals were authorized for the period of the war. The reduction at the close of the war was accomplished by a proviso in the act of July 19, 1848 (ibid., 247), which required that vacancies occurring in the grade of general officer, should not be filled until the numbers of major and brigadier general had been reduced to one and two, respectively.

At the outbreak of the war of the rebellion the President, by proclamations, dated April 15, 1861 (12 Stat. L., 1258), and May 3, 1861 (ibid., 1260), called forth a force of 75,000 militia and 42,034 volunteers; and Congress, by the act of July 22, 1861 (ibid., 268), authorized the enlistment of 500,000 volunteers, and made provision for their organization into brigades and divisions, and for the appointment of such numbers of general officers as were necessary to their command. By section 4 of the same act the President was authorized to select six major-generals and eighteen brigadier-generals from the line or staff of the Army, and the officers so appointed were allowed to retain their army rank. The number of general officers of volunteers was fixed by the act of July 5, 1862 (ibid., 506), which restricted the number of major-generals to forty and the number of brigadier-generals to two hundred. By section 9 of the act of July 28, 1866 (14 ibid., 333), the number of major-generals in the regular establishment was fixed at five and that of brigadier-generals at ten; by section 3 of the act of March 3, 1869 (15 ibid., 318), the number of brigadier-generals was reduced to eight; and by section 8 of the act of July 15, 1870 (16 ibid., 318), the number was still further reduced to six and that of major-generals to three.

CHAPTER XII.

GENERAL OFFICERS, AIDS, AND MILITARY SECRETARIES.

Par.
555. General officers.
556. Aids to the Lieutenant-General.
557. Aids to major-generals and to brigadier-generals.
558. Discontinuance of the office of General.
559. Appointment of general officers.
560. The same.

555. From and after the approval of this act the Army of the United States shall consist of one Lieutenant-General, six major-generals, fifteen brigadier-generals. *Act of February 2, 1901 (31 Stat. L., 748).*

General officers. Feb. 2, 1901, v. 31, p. 748.

556. The Lieutenant-General may select from the Army two aids and one military secretary, who [shall] have the rank of lieutenant-colonel of cavalry while serving on his staff.[1]

Lieutenant-General's aids and secretary. July 25, 1866, c. 232, s. 2, v. 14, p. 223; July 28, 1866, c. 299, s. 9, v. 14, p. 333; Feb. 27, 1877, c. 69, v. 19, p. 241. **Sec. 1097, R. S.**

557. Each major-general shall have three aids, who may be selected by him from captains or lieutenants of the Army, and each brigadier-general shall have two aids, who may be selected by him from lieutenants of the Army.[2]

Aids of major and brigadier generals. July 21, 1861, c. 24, s. 3, v. 12, p. 280; July 28, 1866, c. 299, s. 9, v. 14, p. 333. **Sec. 1098, R.S.**

---

[1] The personal staff of the Lieutenant-General was established by section 5 of the act of May 28, 1798 (1 Stat. L., 558), and consisted of four aids and two military secretaries, each of whom was to have the rank, pay, and emoluments of a lieutenant-colonel; the same establishment was allowed to General Scott when the grade of Lieutenant-General was revived and conferred, by brevet, upon that officer under the authority contained in joint resolution No. 9, of February 15, 1855 (10 ibid., 723). By section 16 of the act of March 3, 1857 (11 ibid., 205), the number of officers on the personal staff of the Lieutenant-General in time of peace was restricted to two aids and one military secretary, with the rank and pay of lieutenant-colonels of cavalry. When the grade of Lieutenant-General was revived by the act of February 29, 1864 (13 ibid., 11), the personal staff as established by the act of May 28, 1798, was authorized; by section 2 of the act of July 28, 1866 (14 ibid., 223), the staff of that officer was fixed at two aids and a military secretary. These officers were to be selected by detail from the Army and were to have, while so detailed, the rank, pay, and emoluments of lieutenant-colonels of cavalry.

[2] Section 5 of the act of March 2, 1821 (3 Stat. L., 615), contained the requirement that aids to major and brigadier generals should be appointed, by selection, from the subalterns of the Army. By section 8 of the act of June 18, 1846 (9 ibid., 17), captains were made eligible for selection as aids to major-generals. A major-general is allowed by law three aids, to be taken from captains or lieutenants of the Army. A brigadier-general is allowed two, to be taken from the lieutenants of the Army. An officer assigned to duty in accordance with his brevet rank as major-general or brigadier-general may, with the special sanction of the War Department, be allowed the aids of the grade. General officers may select their aids from officers

Discontinuance of offices of General and Lieutenant-General.
Sec. 1217, R.S.

558. When a vacancy occurs in the office of General[1] * * * such office shall cease and all enactments creating or regulating such office shall * * * be held to be repealed.[2]

---

serving in their commands, subject to the restrictions herein prescribed, but appointments as aids of officers serving without such limits must receive the approval of the Secretary of War. An officer will be appointed aid to a general officer only after he shall have actually served with troops for at least three of the five years immediately preceding such appointment. He will hold such appointment for no longer a period than four years, except that, upon the request of a general officer whose retirement by reason of age will occur within one year, the tour of four years may be extended by the Secretary of War to the date of such retirement. Par. 33, A. R., 1895.

For statutory provisions and executive regulations respecting the staffs of general officers when assigned to commands see the chapter entitled RANK AND COMMAND—TACTICAL AND TERRITORIAL ORGANIZATIONS.

[1] The grade of "General of the Armies of the United States" was created by section 9 of the act of March 3, 1799 (1 Stat. L., 752). The office, though not expressly referred to in any of the acts for the reduction or disbandment of the forces raised in contemplation of war with France, ceased to exist in 1802, not having been mentioned in the act of March 16, 1802 (2 ibid., 132), which determined the military peace establishment. The grade was revived under the title of "General of the Army of the United States," by the act of July 25, 1866 (14 ibid., 223), and was conferred upon Lieutenant-General Grant; and was recognized and continued by section 9 of the act of July 28, 1866 (ibid., 333). Section 6 of the act of July 15, 1870 (16 ibid., 318), contained the requirement, however, that "the offices of General and Lieutenant-General shall continue until a vacancy shall exist in the same, and no longer, and when such vacancy shall occur in either of said offices immediately thereupon all laws and parts of laws creating said office shall become inoperative, and shall, by virtue of this act, from thenceforward be held to be repealed." The office ceased to exist, as a grade of military rank, at the death of Gen. W. T. Sherman on February 14, 1891. The act of March 3, 1885 (23 ibid., 434), authorized the appointment of a "General of the Army on the Retired List," which was conferred upon Gen. Ulysses S. Grant, and expired on the death of that officer on July 23, 1885. By the act of June 1, 1888 (25 ibid., 165), the grade of Lieutenant-General was discontinued and merged in that of General of the Army, which was conferred upon Lieut. Gen. P. H. Sheridan, and ceased to exist at the death of that officer on August 5, 1888.

CHIEF OF STAFF.—By the act of March 3, 1865 (13 Stat. L., 500), the office of chief of staff, with the rank of brigadier-general, was provided for the Lieutenant-General commanding the Army. By section 2 of the act of July 25, 1866 (14 ibid., 223), that officer was transferred to the staff of the General. The office was abolished by the act of April 3, 1869 (16 ibid., 6).

[2] The grade of Lieutenant-General was first established by the act of May 28, 1798 (1 Stat. L., 558); it was abolished, however, by section 9 of the act of March 3, 1799 (ibid., 752), and the command of the forces authorized to be raised, in contemplation of war with France, was vested in the "General of the Armies of the United States" authorized by that statute. The grade was revived by joint resolution No. 9 of February 15, 1855 (10 ibid., 723), and the rank was conferred by brevet on Maj. Gen. Winfield Scott; the office thus created ceased to exist at the death of that officer on May 29, 1866. The grade was again revived by the act of February 29, 1864 (13 ibid., 11), and conferred upon Maj. Gen. Ulysses S. Grant, and the office was recognized and continued by section 9 of the act of July 28, 1866 (14 ibid., 333), but was to cease to exist upon the occurrence of a vacancy, under the restriction imposed by section 6 of the act of July 15, 1870 (16 ibid., 318). The office was vacated and merged in that of General of the Army upon the promotion of Lieutenant-General Sheridan to that grade, under the authority conferred by the act of June 1, 1888 (25 ibid., 165). It was revived a third time by joint resolution No. 9 of February 5, 1895 (28 ibid., 968), and was conferred, subject to the restriction therein contained, upon Maj. Gen. John M. Schofield, and the office continues to exist as a grade of military rank on the retired list. The rank, pay, and allowances of Lieutenant-General were conferred upon "the senior major-general of the line commanding the Army" by section 2 of the act of June 6, 1900 (31 ibid., 655); the office was revived as a grade of military rank by section 1, act of February 2, 1901 (31 Stat. L., 748).

559. The President of the United States is hereby authorized to select from the brigadier-generals of volunteers two volunteer officers, without regard to age, and, by and with the advice and consent of the Senate, appoint them brigadier-generals, United States Army, for the purpose of placing them on the retired list. *Sec. 33, act of February 2, 1901 (31 Stat. L., 756).*

Appointment of general officers.
Feb. 2, 1901, s. 33, v. 31, p. 756.

560. And the President is also hereby authorized to select from the retired list of the Army an officer not above the rank of brigadier-general who may have distinguished himself during the war with Spain, in command of a separate army, and to appoint, and, by and with the advice and consent of the Senate, the officer so selected to be major-general, United States Army, with the pay and allowances established by law for officers of that grade on the retired list. *Ibid.*

The same.

CHAPTER XIII.

RANK AND COMMAND—TACTICAL AND TERRITORIAL ORGANIZATIONS.

Par.
551. Command, detachments.
562. The same, regular and volunteer officers.
563. Officers of militia.
564. Relative rank, army and navy officers.
565. Relative rank of officers, rule.
566. Brevet assignments.

Par.
567. Engineer officers.
568. Medical officers, restriction.
569. Pay officers, restriction.
570. Tactical organizations.
571. The same, time of war.
572. Clerks and messengers.
573. The same assignment.
574. Military headquarters.

Command, when different corps happen to join.
122 Art. War.

561. If, upon marches, guards, or in quarters, different corps of the Army happen to join or do duty together, the officer highest in rank[1] of the line of the Army, Marine Corps, or militia, by commission, there on duty or in quarters, shall command[2] the whole, and give orders for what is needful to the service, unless otherwise specially directed by the President, according to the nature of the case. *One hundred and twenty-second article of war.*

---

[1] The terms "rank" and "command" have received executive interpretation in paragraphs 7 and 13 of the Army Regulations of 1901.

Military rank is that character or quality bestowed on military persons which marks their station and confers eligibility to exercise command or authority in the military service within the limits prescribed by law. It is divided into degrees or grades, which mark the relative positions and powers of the different classes of persons possessing it. Par. 7, A. R., 1901.

Rank is generally held by virtue of office in a regiment, corps, or department, but may be conferred independently of office, as in the case of retired officers and of those holding it by brevet. Par. 8, A. R., 1901.

A determination by the legislative and executive branches of the Government, as to the relation or superior authority among military officers, is conclusive upon the judiciary. De Celis *v.* U. S., 13 Ct. Cls., 117.

The following are the grades of rank of officers and noncommissioned officers:

1. Lieutenant-general.
2. Major-general.
3. Brigadier-general.
4. Colonel.
5. Lieutenant-colonel.
6. Major.
7. Captain.
8. First lieutenant.
9. Second lieutenant.
10. Veterinarian, cavalry and artillery.
11. Cadet.
12. Sergeant-major, regimental, and sergeant-major, senior grade, artillery corps.
13. Quartermaster-sergeant, regimental.
14. Commissary-sergeant regimental.
15. Ordnance sergeant, post commissary-sergeant, post quartermaster-sergeant, electrician sergeant, hospital steward, first-class sergeant Signal Corps, chief musician, chief trumpeter, and principal musician.
16. Squadron and battalion sergeant-major and sergeant-major, junior grade, artilllery corps.
17. First sergeant and drum-major.
18. Sergeant and acting hospital steward.
19. Corporal.

In each grade, date of commission, appointment, or warrant determines the order of precedence. (Par. 9, Army Regulations of 1901.)

[2] Command is exercised by virtue of office and the special assignment of officers holding military rank who are eligible by law to exercise command. Without orders

562. In all matters relating to the rank, duties, and rights of officers, the same rules and regulations shall apply to officers of the Regular Army and to volunteers commissioned in, or mustered into said service, under the laws of the United States, for a limited period. *One hundred and twenty-third article of war.*

Regular and volunteer officers on same footing as to rank, etc.
Mar. 2, 1867, c. 159, s. 2, v. 14, p. 435.
123 Art. War.

563. Officers of the militia of the several States, when called into the service of the United States, shall on all detachments, courts-martial, and other duty wherein they may be employed in conjunction with the regular or volunteer forces of the United States, take rank next after all officers of the like grade in said regular or volunteer forces, notwithstanding the commissions of such militia officers may be older than the commissions of the said officers of the regular or volunteer forces of the United States. *One hundred and twenty-fourth article of war.*

Rank of militia officers when on duty with regular or volunteer forces.
Mar. 2, 1867, c. 159, s. 2, v. 14, p. 435.
124 Art. War.

564. The relative rank between officers of the Navy, whether on the active or retired list, and officers of the Army shall be as follows, lineal rank only being considered:

The Vice-Admiral shall rank with the Lieutenant-General.

Rear-admirals with major-generals.

Relative rank of navy and army officers.
July 16, 1862, c. 183, s. 13, v. 12, p. 585; Dec. 21, 1864, c. 6, s. 1, v. 13, p. 420; July 25, 1866, c. 231, s. 1, v. 14, p. 222; Mar. 2, 1867, c. 174, s. 1, v. 14, pp. 515, 516; Mar. 3, 1883, v. 22, p. 472.
Sec. 1466, R. S.

---

from competent authority an officer can not put himself on duty by virtue of his commission alone, except as contemplated in the twenty-fourth and one hundred and twenty-second articles of war. Par. 13, A. R., 1901.

The following are the commands appropriate to each grade:

1. For a captain, a company.
2. For a major or lieutenant-colonel, a battalion or squadron.
3. For a colonel, a regiment.
4. For a brigadier-general, two regiments.
5. For a major-general, four regiments. Par. 14, A. R., 1901.

The functions assigned to any officer in these regulations by title of office devolve upon the officer acting in his place, except when otherwise specified. An officer in temporary command shall not, except in urgent cases, alter or annul the standing orders of the permanent commander without authority from the next higher commander. Par. 15, A. R., 1901.

An officer who succeeds to any command or duty stands in regard to his duties in the same situation as his predecessor. The officer relieved will turn over to his successor all orders in force at the time and all the public property and funds pertaining to his command or duty, and will receive therefor duplicate receipts showing the condition of each article. Par. 16, A. R., 1901.

When an officer is charged with directing an expedition or making a reconnoissance, without having command of the escort, the commander of the escort will consult him touching all arrangements necessary to secure the success of the operation. Par. 19, A. R., 1901. For statutory provisions respecting the exercise of command by staff officers see the chapter called THE STAFF DEPARTMENTS. See, also, paragraphs 17 and 18, A. R., 1901.

Commodores[1] with brigadier-generals.
Captains with colonels.
Commanders with lieutenant-colonels.
Lieutenant-commanders with majors.
Lieutenants with captains.
Lieutenants, junior grade, with first lieutenants.[2]
Ensigns with second lieutenants.

Relative rank, how determined. Mar. 2, 1867, c. 159, s. 1, v. 14, p. 434. Sec. 1219, R.S.

565. In fixing relative rank[3] between officers of the same grade and date of appointment and commission, the time which each may have actually served as a commissioned officer of the United States, whether continuously or at different periods, shall be taken into account. And in computing such time, no distinction shall be made between service as a commissioned officer in the Regular Army and service since the 19th day of April, 1861, in the volunteer forces, whether under appointment or commission from the President or from the governor of a State.

Assignment to duty according to brevet rank. Sec. 1211, R.S.

566. Officers may be assigned to duty or command according to their brevet rank by special assignment of the President; and brevet rank shall not entitle an officer to precedence or command except when so assigned.

Assignment and transfer of engineers. Apr. 10, 1806, c. 20, art. 63, v. 2, p. 367. Sec. 1158, R.S.

567. Engineers shall not assume nor be ordered on any duty beyond the line of their immediate profession, except by the special order of the President.[4] They may, at the discretion of the President, be transferred from one corps to another, regard being paid to rank.

---

[1] The office of commodore, as a grade of rank on the active list of the Navy, was abolished by section 7 of the act of March 3, 1899 (30 Stat. L., 1005); that statute also contained the requirement that "each rear-admiral embraced in the nine lower numbers of the grade shall receive the same pay and allowance as are now allowed a brigadier-general in the Army."

[2] The office of lieutenant, junior grade, was created by the act of March 3, 1883 (22 Stat. L., 442), replacing that of master in the Navy, which was discontinued by that statute.

[3] Officers of the Regular Army, Marine Corps, and volunteers when commissioned or mustered into the service of the United States, being upon equal footing, take precedence in each grade by date of commission or appointment. Militia officers, when employed with the regular or volunteer forces of the United States, take rank next after all officers of like grade in those forces. Par. 10, A. R., 1901.

Between officers of the same grade and date of appointment or commission, other than through promotion by seniority, relative rank is determined by length of service, continuous or otherwise, as a commissioned officer of the United States, either in the Regular Army or, since April 19, 1861, in the volunteer forces. When periods of service are equal, precedence will, except when fixed by order of merit on examination, be determined, first, by rank in service when appointed; second, by former rank in the Army or Marine Corps; third, by lot, among such as have not been in the military service of the United States. Par. 11, A. R., 1901.

[4] An officer of engineers or ordnance, or of the Adjutant-General's, Inspector-General's, Judge-Advocate-General's, Quartermaster's, or Subsistence Department, or of the Signal Corps, though eligible to command, according to his rank, shall not assume command of troops unless put on duty under orders which specially so direct, by authority of the President. Par. 17, A. R., 1901.

568. Officers of the Medical Department of the Army shall not be entitled, in virtue of their rank, to command in the line or in other staff corps.[1]

Medical officers not to command in line or in other staff departments.
Sec. 1169, R.S.

569. Officers of the Pay Department shall not be entitled, in virtue of their rank, to command in the line or in other staff corps.[1]

Pay officers not to command in line or in other staff departments.
Sec. 1183, R.S.

TACTICAL ORGANIZATIONS.

570. In the ordinary arrangement of the Army two regiments of infantry or of cavalry shall constitute a brigade, and shall be the command of a brigadier-general, and two brigades shall constitute a division, and shall be the command of a major-general; but it shall be in the discretion of the commanding general to vary this disposition whenever he may deem it proper to do so.[2]

Tactical organizations.
Mar. 3, 1799, c. 48, s. 8, v. 1, p. 752; Apr. 22, 1898, s. 9, v. 30, p. 362.
Sec. 1114, R.S.

571. In time of war, or when war is imminent, the troops in the service of the United States, whether belonging to the Regular or Volunteer Army or to the militia, shall be organized, as far as practicable, into divisions of three brigades, each brigade to be composed of three or more regiments; and whenever three or more divisions are assembled in the same army the President is authorized to organize them into army corps, each corps to consist of not more than three divisions. *Sec. 9, act of April 22, 1898 (30 Stat. L., 362).*

War organization.
Apr. 22, 1898, s. 9, v. 30, p. 362.

CLERKS AND MESSENGERS.[3]

572. For pay to clerks and messengers: * * * Five clerks at one thousand eight hundred dollars each per annum. * * * Ten clerks at one thousand six hun-

Clerks and messengers.
Mar. 2, 1901, v. 31, p. 899.

---

[1] An officer of the Pay or Medical Department can not exercise command, except in his own department; but by virtue of his commission he may command all enlisted men like other commissioned officers. (Par. 18, A. R., 1901.)

[2] Paragraph 189 of the Army Regulations of 1895 contains the provision that, in time of peace, army corps, divisions, and brigades will not be formed except for purposes of instruction. Section 9 of the act of July 17, 1862 (12 Stat. L., 594), authorized the President to establish and organize army corps according to his discretion. Section 10 of the same act provided for the staff of an army corps. Such legislation was not necessary, however, the organization of separate armies, army corps, grand divisions, wings, reserves, and the like, in time of war, being a matter within the discretion of the President as the Commander in Chief. For regulations respecting the organization of armies in the field in time of war, see the volume entitled TROOPS IN CAMPAIGN; see, also, Scott's Dig., pp. 244, 245. For the war organization of the military forces of the United States, see next paragraph.

[3] The clerks and messengers above referred to and provided for were first authorized by the Act of August 6, 1894 (28 Stat. L., 236); they replace the force of "General service clerks and messengers" created by the act of July 29, 1886 (24 Stat. L., 167), but discontinued by the act of August 6, 1894 (28 Stat. L., 233). Their numbers and compensation are determined in the annual acts of appropriation for the support of the Army.

dred dollars each per annum. * * * Twenty-five clerks at one thousand four hundred dollars each per annum. * * * Sixty-five clerks at one thousand two hundred dollars each per annum. * * * Eighty-six clerks at one thousand dollars each per annum. Sixty-eight messengers at seven hundred and twenty dollars each per annum. *Act of March 2, 1901 (31 Stat. L., 899).*

Employment and assignment. *Ibid.*

573. And said clerks and messengers shall be employed and assigned by the Secretary of War to the offices and positions in which they are to serve. *Ibid.*

MILITARY HEADQUARTERS.

Military headquarters. June 23, 1879, v. 21, p. 35.

574. When the economy of the service requires, the Secretary of War shall direct the establishment of military headquarters at points where suitable buildings are owned by the Government.[1] *Act of June 23, 1879 (21 Stat. L., 35).*

---

[1] TERRITORIAL COMMANDS.

In time of peace our army has been habitually distributed into geographical commands, styled, respectively, military divisions, departments, and districts—the districts, as organized prior to 1815, corresponding to the commands now designated as departments. These divisions and departments can be established only by the President; but, within their respective departments, commanding generals have from time to time grouped adjacent posts into temporary commands, which are now known as districts.

Military divisions, each embracing two or more departments, have obtained from May 17, 1815, to June 1, 1821; from May 19, 1837, to July 12, 1842; from April 20, 1844, to October 31, 1853; from July 25 to August 17, 1861; and from October 13, 1863, to July 2, 1891.

Department organizations have been continuous since 1815. (*a*) Scott's Dig., p. 244.

THE COMMANDING GENERAL OF THE ARMY.

The command exercised by the commanding general of the Army, not having been made the subject of statutory regulation, is determined by the order of assignment. It has been habitually composed of the aggregate of the several territorial commands that have been or may be created by the President.

The military establishment is under the orders of the commanding general of the Army in that which pertains to its discipline and military control. The fiscal affairs of the Army are conducted by the Secretary of War, through the several staff departments. Par. 205, A. R., 1901.

All orders and instructions from the President or Secretary of War relating to military operations or affecting the military control and discipline of the Army will be promulgated through the commanding general. Par. 206, A. R., 1901. See, also, paragraph 11, *ante.*

TERRITORIAL DEPARTMENTS.

Territorial departments are established and their commanders assigned by direction of the President. In time of peace, army corps, divisions, or brigades will not be formed except for purposes of instruction. Par. 189, A. R., 1895.

The commander of a department commands all the military forces of the Government within its limits, whether of the line or staff, which are not specially excepted

[a] Section 6 of the act of June 18, 1878 (20 Stat. L., 150), contained the requirement that thereafter, "in time of peace, all military headquarters, except Army headquarters, shall be established and maintained at points where the Government own buildings or barracks, within the several departments and divisions, and in such buildings or barracks, and not otherwise, unless the Secretary of War shall, by an order in writing, otherwise direct." This requirement was expressly repealed by the act of June 23, 1879 (21 Stat. L., 35).

from his control by the War Department. The infantry and cavalry school at Fort Leavenworth, Kans., and the cavalry and light artillery school at Fort Riley, Kans., in matters pertaining to the courses of instruction; the Military Academy; the artillery school; the engineer establishment at Willets Point; the arsenals; the general depots of supply; the general-service recruiting stations; such permanent fortifications as may be in process of construction or repair, and officers employed on special duty under the Secretary of War, are exempted from the supervision of department commanders. But when an emergency demands it, all military men and material within the limits of their jurisdiction come under their control. Par. 208, A. R., 1901.

Purchasing commissaries, officers on duty at general depots of supply, and others indicated in the preceding paragraph, whether reporting by letter to department commanders or not, are subject to their orders for court-martial or other duty in an emergency only; and officers on duty with the commands at Fort Leavenworth, Fort Monroe, and Fort Riley will not be detached without the orders of the Secretary of War or the commanding general of the Army. Par. 209, A. R., 1901.

A department commander is charged with the administration of all the military affairs of his department, and the execution of all orders from higher authority. He will report to the commanding general of the Army all matters relating to the general welfare of his command, including such change of station of troops as he may deem desirable, but will obtain the approval of the commanding general of the Army before ordering the movement. If it be necessary to move troops to meet emergencies, such movements and all the circumstances will be reported at the earliest possible moment. Par. 210, A. R., 1901.

Each department commander will inspect the troops under his command at least once each year, and for this purpose he may be accompanied by one officer of his personal or the department staff. He will assure himself by personal examination and observation that all officers and men under his control are efficient in the performance of duty, that the troops are thoroughly drilled and instructed in their field duties and tactical exercises, that supplies are properly distributed, that proper care is exercised in the purchase and preservation of public property, and that strict economy is exercised in all public expenditures. In his annual report the results of these inspections will be summarized. From time to time he will report, for the information of the commanding general of the Army and the Secretary of War, the names of any and all officers belonging to his command who are believed to be incompetent or permanently unable, from any cause, to perform all the duties of their several grades, both in garrison and in active service; he will also report any errors, irregularities, or abuses requiring the action of higher authority. Par. 211, A. R., 1901.

Department commanders are expected to determine controversies arising within the limits of their jurisdiction and decide questions referred to them on appeal. Par. 212, A. R., 1901.

Although a department commander may continue to discharge the more important functions of his command while beyond its territorial limits, his absence therefrom requires the sanction of the Secretary of War, and if intending to leave his headquarters for an absence within his department, he will report to the Adjutant-General of the Army his intention, the duration of, and his address during, his proposed absence. Par. 195, A. R., 1895.

STAFF OF DEPARTMENT COMMANDERS.

The personal staff of a department commander will consist of the authorized aids. The department staff will be limited to the officers detailed by the Secretary of War from appropriate staff departments or corps, or of officers of the line detailed by the same authority to act in their stead, and their official designations will be as follows: Adjutant-general, chief quartermaster, chief commissary, chief surgeon, chief paymaster, judge-advocate, and artillery inspector, the last appointed as prescribed in paragraph 350; also, when necessary, an engineer officer, an ordnance officer, and a signal officer, each detailed from his corps; but when any of these officers are not assigned, or when any department staff officer is temporarily absent or disabled, the duties of his position will be performed by other members of the department or personal staff. The chief quartermaster and chief commissary will each have charge of the depot of his department, at the place where headquarters are located, and will, when practicable, make purchases. The chief surgeon will, when practicable, perform the duty of attending surgeon. The chief paymaster will make a proportion of the payments in the command. The duties prescribed in Small-Arms Firing Regulations for the inspector of small-arms practice will be performed by an aid or by the adjutant-general. Par. 214, A. R., 1901.

LIBRARY
OF THE
UNIVERSITY
OF
CALIFORNIA

CHAPTER XIV.

THE STAFF DEPARTMENTS—GENERAL PROVISIONS—DISBURSING OFFICERS.

Par.
575–577. Heads of departments, appointment and detail.
578. Appointments to the staff.
579–582. Details to the staff; promotions.
583–588. Examinations for promotion.
589–590. Transfers to the staff.
591. Promotion after fourteen years service.
592–605. Disbursing officers; bonds.
606–610. Deposit and safe-keeping of public moneys.
611–616. Proceeds of sales.
617–624. Disbursements.
625–626. Inspection of disbursements.
Par.
627. Decision by Comptroller in advance of payment.
628. Assignment of claims; powers of attorney.
629. Counterfeit money.
630. Presentation of drafts.
631. Lost checks, duplicate checks.
632–635. Accounts and accounting.
636–641. Rendition of accounts.
642. Revision of accounts.
643. Suits for the recovery of money.
644–661. Miscellaneous offenses in connection with public money.

HEADS OF DEPARTMENTS;[1] APPOINTMENTS AND DETAILS.

Vacancies, how filled.
Feb. 2, 1901, s. 26, v. 31, p. 755.

575. When vacancies shall occur in the position of chief of any staff corps or department the President may appoint to such vacancies, by and with the advice and consent of the Senate, officers of the Army at large not below the rank of lieutenant-colonel, and who shall hold office for terms of four years. When a vacancy in the position of chief of any staff corps or department is filled by the appointment of any officer below the rank now provided by law for said office, said chief shall, while so serving, have the same rank, pay, and allowances now provided for the chief of such corps or department. *Sec. 26, act of February 2, 1901* (*31 Stat. L.*, *755*).

The same, restriction.
Ibid.

576. So long as there remain in service officers of any staff corps or department holding permanent appointments, the chief of such staff corps or department shall be selected from the officers so remaining therein. *Ibid.*

The same, retirement.
Ibid.

577. Any officer now holding office in any corps or department who shall hereafter serve as chief of a staff corps or department and shall subsequently be retired, shall be retired with the rank, pay, and allowances authorized by law for the retirement of such corps or department chief. *Ibid.*

---

[1] For the requirement of section 1132 of the Revised Statutes, authorizing the President to designate officers of the several staff departments to perform the duties of chiefs of department during the absence of the heads thereof, see paragraph 121, *ante*.

APPOINTMENTS.

Appointments. March 2, 1901, v. 31, p, 900.

578. Appointments to fill original vacancies in the lowest grade in the Adjutant-General's Department, the Inspector-General's Department, and Judge Advocate-General's Department, and in the grade of captain in the Quartermaster's Department, Subsistence Department, and Pay Department may be made from officers of volunteers commissioned since April twenty-first, eighteen hundred and ninety-eight, and the age limit prescribed as to chaplains shall not apply to persons who served as chaplains of volunteers after said date who were under forty-two years of age when originally appointed. *Act of March 2, 1901* (*31 Stat. L., 900*).

DETAILS TO THE STAFF; PROMOTIONS.

Promotions. Feb. 2, 1901, s. 26, v. 31, p. 755.

579. That so long as there remain any officers holding permanent appointments in the Adjutant-General's Department, the Inspector-General's Department, the Quartermaster's Department, the Subsistence Department, the Pay Department, the Ordnance Department, and the Signal Corps, including those appointed to original vacancies in the grades of captain and first lieutenant under the provisions of sections sixteen, seventeen, twenty-one, and twenty-four of this act, they shall be promoted according to seniority in the several grades, as now provided by law, and nothing herein contained shall be deemed to apply to vacancies which can be filled by such promotions or to the periods for which the officers so promoted shall hold their appointments. *Sec. 26, act of February 2, 1901* (*31 Stat. L., 755*).

Details. *Ibid.*

580. When any vacancy, except that of the chief of the department or corps, shall occur which can not be filled by promotion as provided in this section, it shall be filled by detail from the line of the Army, and no more permanent appointments shall be made in those departments or corps after the original vacancies created by this act shall have been filled. Such details shall be made from the grade in which the vacancies exist, under such system of examination as the President may from time to time prescribe. *Ibid.*

Term. *Ibid.*

581. All officers so detailed shall serve for a period of four years, at the expiration of which time they shall return to duty with the line, and officers below the rank of lieutenant-colonel shall not again be eligible for selection in any staff department until they shall have served two years with the line. *Ibid.*

Vacancies in line. Sec. 27, *ibid.*

582. Each position vacated by officers of the line transferred to any department of the staff for tours of service under this act shall be filled by promotion in the line until the total number detailed equals the number authorized for duty in such department. Thereafter vacancies caused by details from the line to the staff shall be filled by officers returning from tours of staff duty. If under the operation of this act the number of officers returned to any particular arm of the service at any time exceeds the number authorized by law in any grade, promotions to that grade shall cease until the number has been reduced to that authorized. *Sec. 27, ibid.*

EXAMINATIONS FOR PROMOTION.[1]

Par.
583. Examinations.
584. Failure to pass.
585. Examination of appointees from civil life.

Par.
586. The same, waiver of privilege.
587. Examination of engineer and ordnance officers.
588. Promotion of absent officer.

Examinations for promotion. Oct. 1, 1890, s. 3, v. 26, p. 562.

583. That the President be, and he is hereby, authorized to prescribe a system of examination of all officers of the Army below the rank of major to determine their fitness for promotion, such an examination to be conducted at such times anterior to the accruing of the right to promotion as may be best for the interests of the service: *Provided*, That the President may waive the examination for promotion to any grade in the case of any officer who in pursuance of existing law has passed a satisfactory examination for such grade prior to the passage of this act. *Sec. 3, act of October 1, 1890 (26 Stat. L., 562).*

---

[1] See, also, section 1 of the act of October 1, 1890 (26 Stat. L., 252). So much of section 1194, Revised Statutes, as prohibited appointments and promotions in the Adjutant-General's, Inspector-General's, Pay, Quartermaster's, Subsistence, Ordnance, and Medical Departments was repealed; as to the Adjutant-General's Department, by the act of March 3, 1875 (18 Stat. L., 478); as to the Inspector-General's Department, by the act of June 23, 1874 (18 Stat. L., 244); as to the grade of major in the Pay Department, by the act of March 3, 1875 (18 Stat. L., 524), and the act of March 3, 1877 (19 Stat. L., 270); as to the Quartermaster's Department, by the act of March 3, 1875 (18 Stat. L., 338); as to the Ordnance, Subsistence, and Medical Departments, by section 8 of the act of June 23, 1874 (18 Stat. L., 245). The act of March 3, 1877 (19 Stat. L., 270), declared that this section "now applying only to the grades in the Pay Department of the Army above the rank of major is hereby repealed" (19 Stat. L., 270).

The act of June 23, 1874, contained the provision that as vacancies shall occur in any of the grades of the Ordnance and Medical Departments, no appointments shall be made to fill the same until the numbers in such grade shall be reduced to the numbers which are fixed for permanent appointments by the provisions of this act; and thereafter the number of permanent officers in said grades shall continue to conform to said reduced numbers, and all other grades in said Ordnance and Medical Departments than those authorized by the provisions of this act shall cease to exist as soon as the same shall become vacant by death, resignation, or otherwise; and no appointment or promotion shall hereafter be made to fill any vacancy which may occur therein.

The same statute also provided that no officer now in the service shall be reduced in rank or mustered out by reason of any provision of law herein made reducing the number of officers in any department or corps of the staff.

Retirement on failure to pass due to physical disability contracted in line of duty. Oct. 1, 1890, s. 3, v. 26, p. 562.

584. If any officer fails to pass a satisfactory examination and is reported unfit for promotion, the officer next below him in rank, having passed said examination, shall receive the promotion: *And provided*, That should the officer fail in his physical examination and be found incapacitated for service by reason of physical disability contracted in line of duty he shall be retired with the rank to which his seniority entitled him to be promoted; but if he should fail for any other reason he shall be suspended from promotion for one year, when he shall be reexamined, and in case of failure on such reexamination he shall be honorably discharged with one year's pay from the Army.

Failure for other reasons.

Failure on reexamination.

Examination of officers appointed from civil life, etc. Sec. 3, *ibid.*

585. The examination of officers appointed in the Army from civil life, or of officers who were officers of volunteers only, or where officers of the militia of the several States called into the service of the United States, or were enlisted men in the regular or volunteer service, either in the Army, Navy, or Marine Corps, during the war of the rebellion, shall be conducted by boards composed entirely of officers who were appointed from civil life or of officers who were officers of volunteers only during said war, and such examination shall relate to fitness for practical service and not to technical and scientific knowledge: and in case of failure of any such officer in the reexamination hereinbefore provided for, he shall be placed upon the retired list of the Army; and no act now in force shall be so construed as to limit or restrict the retirement of officers as herein provided for. *Sec. 3, act of October 1, 1890 (26 Stat. L., 562).*

Composition of boards.

Failure.

Officers appointed from civil life may waive board of similar character. July 27, 1892, v. 27, p. 276.

586. Officers entitled by this section to examination by a board composed entirely of officers who were appointed from civil life, or who were officers of volunteers only during the war, may, by written waiver filed with the War Department, relinquish such right, in which case the examination of such officers shall be conducted by boards composed as shall be directed by the Secretary of War. *Act of July 27, 1892 (27 Stat. L., 276).*

Examination of certain officers of Engineers and Ordnance.
Sec. 2, July 27, 1892, v. 27, p. 276.

587. The examination of officers of the Corps of Engineers and Ordnance Department, who were officers or enlisted men in the regular or volunteer service, either in the Army, Navy, or the Marine Corps, during the war of the rebellion, shall be conducted by boards composed in the same manner as for the examination of other officers of their respective corps or department; and the examinations shall embrace the same subjects prescribed for all other officers of similar grades in the Corps of Engineers and Ordnance Department, respectively. *Sec. 2, act of July 27, 1892 (27 Stat. L., 276).*

Promotion of absent officer.
Feb. 2, 1901, s. 32, v. 31, p. 756.

588. When the exigencies of the service of any officer who would be entitled to promotion upon examination require him to remain absent from any place where an examining board could be convened, the President is hereby authorized to promote such officer, subject to examination, and the examination shall take place as soon thereafter as practicable. If upon examination the officer be found disqualified for promotion, he shall, upon the approval of the proceedings by the Secretary of War, be treated in the same manner as if he had been examined prior to promotion. *Sec. 32, act of February 2, 1901 (31 Stat. L., 756).*

TRANSFERS TO THE STAFF.

Transfers between line and staff.
March 3, 1812, s. 4, v. 2, p. 819.
Apr. 24, 1816, s. 9, v. 3, p. 298.
June 18, 1846, s. 7, v. 9, p. 18.
Sec. 1205, R. S.

589. Officers may be transferred from the line to the staff of the Army without prejudice to their rank or promotion in the line; but no officer shall hold, at the same time, an appointment in the line and an appointment in the staff which confer equal rank in the Army. When any officer so transferred has, in virtue of seniority, obtained, or become entitled to, a grade in his regiment equal to the grade of his commission in the staff, he shall vacate either his commission in the line or his commission in the staff.[1]

Transfers of engineer officers.
Apr. 10, 1806, art. 16, v. 2, p. 367.
Sec. 1158, R. S.

590. Engineers shall not assume nor be ordered on any duty beyond the line of their immediate profession, except by the special order of the President. They may, at the discretion of the President, be transferred from one corps to another, regard being paid to rank.

---

[1] The requirements of this section, since the approval of the act of February 2, 1901 (31 Stat. L., 748), apply only to transfers between officers of the line and officers holding permanent appointments in the several departments or branches of the staff.

PROMOTIONS AFTER FOURTEEN YEARS' SERVICE.

591. When any lieutenant of the Corps of Engineers or Ordnance Corps or Signal Corps has served fourteen years' continuous service as lieutenant, he shall be promoted to the rank of captain, on passing the examination provided by the preceding section, but such promotion shall not authorize an appointment to fill any vacancy, when such appointment would increase the whole number of officers in the corps beyond the number fixed by law; nor shall any officer be promoted before officers of the same grade who rank him in his corps. *Sec. 7, act of October 1, 1890 (26 Stat. L., 653).*

After fourteen years' service.
3 Mar., 1853, c. 98, s. 9, v. 10, p. 219.
3 Mar., 1863, c. 78, ss. 3, 4, v. 12, p. 743.
27 *Feb.*, 1877, *c.* 69, *v.* 19, *p.* 243.
Oct. 1, 1890, s. 7, v. 26, p. 653.

DISBURSING OFFICERS.

BONDS.

Par.
592. Bonds, by whom given.
593. Increase of bonds.
594–601. Security companies as sureties.
602, 603. Examination and renewal of bonds.

Par.
604. Liability of sureties.
605. Release of sureties.

592. All officers of the Quartermaster's, Subsistence, and Pay Departments, the chief medical purveyor and assistant medical purveyors, and all store-keepers shall, before entering upon the duties of their respective offices, give good and sufficient bonds to the United States, in such sums as the Secretary of War may direct, faithfully to account for all public moneys and property which they may receive. The President may, at any time, increase the sums so prescribed.[1] But the Quartermaster-General shall not be liable for any money or property that may come into the hands of the subordinate officers of his department.[2]

Bonds of disbursing officers; by whom given.
Apr. 24, 1816, c. 69, s. 6, v. 3, p. 298; June 17, 1846, c. 28, s. 2, v. 9, p. 17; Mar. 3, 1857, c. 106, s. 2, v. 11, p. 203; Aug. 23, 1842, c. 186, s. 2, v. 5, p. 512; July 28, 1866, c. 299, s. 17, v. 14, p. 334; May 15, 1820, c. 102, s. 3, v. 3, p. 582; July 17, 1862, c. 201, s. 16, v. 12, p. 600; Feb. 27, 1877, v. 19, p. 243.
Sec. 1191, R. S.

---

[1] For statutory requirements respecting bonds and sureties, in addition to those cited in this chapter, see the chapters entitled THE TREASURY DEPARTMENT, THE COURT OF CLAIMS, THE QUARTERMASTER'S DEPARTMENT, THE SUBSISTENCE DEPARTMENT, THE PAY DEPARTMENT, THE MEDICAL DEPARTMENT, and CONTRACTS AND PURCHASES. Officers of the Army and Navy are excepted from the provisions of section 3614, Revised Statutes, which require all special agents employed by the heads of the several Executive Departments in the disbursement of the public moneys to give bonds in such form and with such security as such heads of Departments may approve. This section does not apply to all commissioned officers of the Army who may be required to act as disbursing officers, but to such only as are regularly appointed disbursing officers and who are required, as such, to give bonds. Ex parte Randolph, 2 Brockenbrough, 447. See also U. S. *v.* Kirkpatrick, 9 Wh., 720; U. S. Van Zandt, 11 Wh., 184; Dox *v.* Postmaster-General, 1 Pet., 325; U. S. *v.* Linn, 15 Pet., 290.

[2] A bond to the United States, conditioned that a property and disbursing officer of the War Department shall faithfully discharge his duties and faithfully account for public money and property committed to his charge, takes effect on the day

Increase of bonds.
Aug. 6, 1846, c. 90, s. 6, v. 9, p. 60; July 3, 1852, c. 54, s. 7, v. 10, p. 12;

593. The President is authorized, if in his opinion the interest of the United States requires the same, to regulate and increase the sums for which bonds are, or may be,

---

when it is accepted by the Government, and is to be regarded as of that date. Moses *v.* U. S., 166 U. S., 571. A surety on the bond of one in official relation with the Government is himself in contract relation with it, and, as he is liable to be sued by it, he has the right to sue it whenever a balance is due from it to which, on the principle of subrogation, he will ultimately be entitled. Shwarz *v.* U. S., 35 Ct. Cls., 303; Behan *v.* U. S., 18 *ibid.*, 687, 110 U. S., 338; Hitchcock *v.* U. S., 27 Ct. Cls., 185, 164 U. S., 227; Pope *v.* U. S., 14 *ibid.*, 446. No jurisdiction is conferred upon the Comptroller of the Treasury to render a decision, at the request of the head of a Department, upon the question whether the filing of a new bond relieves the sureties on a prior bond of the same official from liability after the date of the new bond, such a question not involving a payment to be made under the head of the Department. Section 8, act of July 31, 1894 (28 Stat. L., 20).

The giving of bond is not necessary to entitle persons appointed to office in the Army requiring the disbursement of money, to begin to receive pay; they are entitled, like other officers, to be paid upon the acceptance of their appointments, according to par. 1448, Army Regulations, whether they have at that time furnished their bonds or not. XVI Op. Att. Gen., 38. The expense incurred by an officer in furnishing the bond required by law of all disbursing officers of the Government, is not a proper charge against the Government, even though the officer serves without compensation. II Compt. Dec., 262; U. S. *v.* Van Duzee 140 U. S., 171.

Section 1191, Revised Statutes, requires bonds only of certain disbursing officers specifically named. In the absence of any express provision of law, prescribing that bonds shall be furnished by other disbursing officers, the President, in his discretion, and for the better security of the public funds, may, through the head of the proper department, require such bonds to be furnished. (*a*) Dig. Opin. J. A. G., par. 544.

A bond can not be extended beyond the period of the original obligation so as to continue to bind the sureties, without their consent. Nor can an expired bond be revived so as to bind the sureties without their consent. The Secretary of War (or President) has no power to release the sureties in an official bond from their liability to the United States. (*b*) A neglect by the Government to institute suit on a bond does not discharge the sureties; *laches* not being in such cases imputable to the United States. (*c*) Ibid., par. 549.

One of two (or several) sureties can not withdraw independently from his obligation; and if allowed to do so by the obligee, the other surety (or sureties) will be released as to him. But the Secretary of War is not empowered to release the sureties on a disbursing officer's bond. Ibid., par. 554.

The law of the place at which a contract is made governs as to its interpretation, except where the contract is to be performed elsewhere, in which case the law that governs in this respect is the law of the place of performance. An official bond, made to the United States, wherever actually signed, is—as has been held by the Supreme Court (*a*)—a contract made and to be performed at Washington; and by the laws of the District of Columbia the contract of a married woman as surety is not binding. Moreover, it is not the practice of the War Department to accept a *feme covert* as a surety, and before a female surety will be accepted she is required to make oath that she is single in addition to justifying as required of other sureties. Ibid., par. 550.

If after the execution of a bond a material change be made in the name or description of the principal, by erasure, interlineation, or otherwise, without the assent of the sureties or a surety, even though such change be made to correct a mistake, the surety or sureties not consenting will be released. In a case of such an alteration, *recommended* that a new bond be required. Ibid., par. 555. See, also, ibid., paragraphs 554–560.

While departmental regulations duly promulgated have the force of law, in a limited sense, they can not enlarge or restrict the liability of an officer on his bond. Meads *v.* U. S., 81 Fed. Rep., 684.

---

[a] Bonds may be required by the Government from officers appointed to places of trust, though there is no statutory authority to take such bonds, and they will be valid as common-law obligations. In a bond with sureties, given by an officer of the Government, it is sufficient to make the bond valid as a common-law obligation that it is voluntarily given and that the office and the duties assigned to the officer and covered by the bond are duly authorized by law. U. S. *v.* Tingey, 5 Pet., 115; U. S. *v.* Bradley, 10 *id.*, 343, 360; U. S. *v.* Rogers, 28 Fed. Rep., 607; VI Opins. At. Gen., 24.

[b] VII Opins. At. Gen., 62.

[c] U. S. *v.* Kirkpatrick, 9 Wheaton, 720.

required by law, of all district attorneys, collectors of customs, naval officers, and surveyors of customs, navy agents, receivers and registers of public lands, paymasters in the Army, Commissary-General, and by all other officers employed in the disbursement of the public moneys, under the direction of the War or Navy Departments.[1]

Mar. 3, 1857, c. 114, s. 2, v. 11, p. 249; Apr. 21, 1862, c. 59, s. 5, v. 12, p. 382; Mar. 3, 1863, c. 96, s. 5, v. 12, p. 770; July 4, 1864, c. 24, s. 5, v. 13, p. 383; Feb. 18, 1869, c. 33, s. 4, v. 15, p. 271.
Sec. 3639, R. S.

SECURITY COMPANIES AS SURETIES.

Security companies as sureties.
Aug. 13, 1894, v. 28, p. 279.

594. Whenever any recognizance, stipulation, bond, or undertaking conditioned for the faithful performance of any duty, or for doing or refraining from doing anything in such recognizance, stipulation, bond, or undertaking specified, is by the laws of the United States required or permitted to be given with one surety or with two or more sureties, the execution of the same or the guaranteeing of the performance of the condition thereof shall be sufficient when executed or guaranteed solely by a corporation incorporated under the laws of the United States or of any State having power to guarantee the fidelity of persons holding positions of public or private trust, and to execute and guarantee bonds and undertakings in judicial proceedings: *Provided*, That such recognizance, stipulation, bond, or undertaking be approved by the head of department, court, judge, officer, board, or body executive, legislative, or judicial required to approve or accept the same. But no officer or person having the approval of any bond shall exact that it shall be furnished by a guarantee company or by any particular guarantee company.[2] *Act of August 13, 1894 (28 Stat. L., 279).*

---

[1] The Government has the power, through the head of a department, to take a bond from a disbursing officer, though there is no law or general regulation requiring it; and a bond is none the less a voluntary bond because demanded by the superior officer, if not illegally extorted. Moses *v.* U. S., 166 U. S., 571.

[2] *Execution, sealing, etc.*—The bond should of course be executed by *all* the parties—obligor and sureties. It has been held by the U. S. Supreme Court that an official bond, though without seals, may be good as a contract at common law. To avoid, however, any questions that might arise from the absence of a seal, *advised* (February, 1868) that formal seals "of wax or other adhesive substance," be in all cases required to be affixed by the subscribing parties. Dig. Opin., J. A. G., par. 534.

A bond given by a disbursing officer of the Army (or any bond required by the War Department) wherein the Secretary of War is made the obligee, is in incorrect form. The obligee should be—The United States of America. Ibid., par. 542.

A bond should of course be dated, but the omission of the date will not affect the validity of the instrument, as the true date of execution can be proved *aliunde*, in the event of a suit on the bond. Ibid., par. 543.

The seal of both obligor and sureties must be a formal one, of wafer, wax, or other adhesive substance. A mere scroll made with the pen is not accepted as a substitute for a seal in the War Department. A corporation obligor should affix its corporate seal if it has one. But the fact that a corporation has not adopted a corporate seal will not affect the validity of its execution of a bond in which it is principal or surety, provided some form of seal be added to its signature. A cor-

Agents to be appointed in judicial district where surety is undertaken. Sec. 2, *ibid.*

595. No such company shall do business under the provisions of this act beyond the limits of the State or Territory under whose laws it was incorporated and in which its principal office is located nor beyond the limits of the District of Columbia, when such company was incorporated under its laws or the laws of the United States and its principal office is located in said District, until it shall, by

---

poration may make and use any seal, in its discretion, in the same manner as a private individual. Ibid., par. 544.

Justification of sureties.—Of two or more sureties to an official bond, each, according to the regulation, should justify separately; a justification in joint form is irregular and improper. An affidavit of justification should properly be expressed in the first person; not in the third. Ibid., par. 540.

The affidavit of justification of a surety should be *dated*, so that it may appear *when* he was worth the amount specified. The names of the sureties in the justifications should be identical with those inserted in the body of the bond. Their names should not be omitted to be recited in the bond with the name of the principal. Ibid., par. 551.

The affidavit of justification should be taken before some officer, like a notary public, having authority to administer oaths for general purposes and whose official character is authenticated by his seal. (*a*) But as the justification is no part of the bond, and the administration of the oath by an official not competent to administer it does not affect the validity of the bond, the irregularity of the justification, where there is nothing to show that the oath was not taken in good faith by the surety, may be *waived* by the Secretary of War, and in practice it is now (May, 1893) waived, and the bond accepted if otherwise valid. And in case where the seal of the notary was omitted, *recommended* that the instrument be returned to have the seal impressed upon the certificate, for the purpose of such authentication, which would be wanting without it. Ibid., par. 553.

Sureties.—The obligation of each surety must be for the whole amount of the penalty; the regulation requiring that the sureties "shall be jointly and severally bound for the whole amount of the bond." So, where the penalty in a quartermaster's joint and several official bond was $10,000, and the sureties, in executing the same, assumed to be bound only in the sum of $5,000 each, the words "for five thousand dollars" being written under each signature—*held* that the instrument was con tradictory, did not conform to the regulations, and should not be accepted. And similarly *held* in a case of a bond with a penalty of $40,000, where the sureties wrote opposite their signatures, respectively, "for $35,000," "for $5,000." Sureties can not qualify their obligation by thus limiting their personal liabilities. Ibid., par. 535.

There is no statute or regulation prohibiting an officer of the Army from acting as a surety on the official bond of another officer. Such a relation, however, is not one to be favored. Ibid., par. 536.

Par. 572 of the Regulations contemplates plural sureties with bonds of disbursing officers. A justification of a surety, however, is no part of the bond, and as the object of the justification is to satisfy the Secretary of War that the surety is good for double the penalty, the Secretary, where amply satisfied that one certain person offered or executing as surety is pecuniarily sufficient for such amount, would be authorized to accept him (on his properly justifying) as sole surety, and to waive any further surety or sureties with the instrument. A subordinate of course can have no such authority. In view, however, of the terms of the regulation and of the practice under it, this authority would of course most rarely be exercised in cases of disbursing officers' bonds. Ibid., par. 537.

A captain of the commissary department having given bond in a penalty of $12,000, one of his sureties deceased. Par. 563, Army Regulations, 1895, prescribes that "the sureties to bonds given by disbursing officers shall be bound jointly and severally." The officer offered a new bond with one surety in a penalty of $6,000. *Held* that such security would not be legally sufficient, but that a new joint and several bond in the penalty of $12,000 would be required. Ibid., par. 552.

For opinions respecting security companies as sureties see Dig. Opin., J. A. G., pars. 596–602.

---

[a] Under section 19 of act of Congress of May 28, 1896 (29 Stat. L., 184), United States commissioners and all clerks of United States courts are authorized to administer oaths generally. 3 Comp. Dec., 65.

a written power of attorney, appoint some person residing within the jurisdiction of the court for the judicial district wherein such suretyship is to be undertaken, who shall be a citizen of the State, Territory, or District of Columbia, wherein such court is held, as its agent, upon whom may be served all lawful process against such company, and who shall be authorized to enter an appearance in its behalf. A copy of such power of attorney, duly certified and authenticated, shall be filed with the clerk of the district court of the United States for such district at each place where a term of such court is or may be held, which copy, or a certified copy thereof, shall be legal evidence in all controversies arising under this act. If any such agent shall be removed, resign, or die, become insane, or otherwise incapable of acting, it shall be the duty of such company to appoint another agent in his place, as hereinbefore prescribed, and until such appointment shall have been made, or during the absence of any agent of such company from such district, service of process may be upon the clerk of the court wherein such suit is brought, with like effect as upon an agent appointed by the company. The officer executing such process upon such clerk shall immediately transmit a copy thereof by mail to the company, and state such fact in his return. A judgment, decree, or order of a court entered or made after service of process as aforesaid shall be as valid and binding on such company as if served with process in said district. *Sec. 2, ibid.*

Copy of charter to be filed with Attorney-General. Sec. 3, *ibid.*

596. Every company before transacting any business under this act shall deposit with the Attorney-General of the United States a copy of its charter or articles of incorporation, and a statement signed and sworn to by its president and secretary showing its assets and liabilities. If the said Attorney-General shall be satisfied that such company has authority under its charter to do the business provided for in this act, and that it has a paid-up capital of not less than two hundred and fifty thousand dollars, in cash or its equivalent, and is able to keep and perform its contracts, he shall grant authority in writing to such company to do business under this act. *Sec. 3, ibid.*

Attorney-General to grant authority to act. Sec. 3, *ibid.*

Quarterly reports. Supervisory powers of Attorney-General. Sec. 4, *ibid.*

597. Every such company shall, in the months of January, April, July, and October of each year, file with the said Attorney-General a statement, signed and sworn to by its president and secretary, showing its assets and liabilities, as is required by section three of this act. And the said Attorney-General shall have the power, and it shall be his duty, to revoke the authority of any such company to transact any new business under this act whenever in his judgment such company is not solvent or is conducting its business in violation of this act. He may institute inquiry at any time into the solvency of said company and may require that additional security be given at any time by any principal when he deems such company no longer sufficient security. *Sec. 4, ibid.*

Jurisdiction of United States courts.
Sec. 5, *ibid.*

598. Any surety company doing business under the provisions of this act may be sued in respect thereof in any court of the United States which has now or hereafter may have jurisdiction of actions or suits upon such recognizance, stipulation, bond, or undertaking in the district in which such recognizance, stipulation, bond, or undertaking was made or guaranteed, or in the district in which the principal office of such company is located. And for the purposes of this act such recognizance, stipulation, bond, or undertaking shall be treated as made or guaranteed in the district in which the office is located, to which it is returnable, or in which it is filed, or in the district in which the principal in such recognizance, stipulation, bond, or undertaking resided when it was made or guaranteed. *Sec. 5, ibid.*

Forfeiture of rights on failure to pay judgment.
Sec. 6, *ibid.*

599. If any such company shall neglect or refuse to pay any final judgment or decree rendered against it upon any such recognizance, stipulation, bond, or undertaking made or guaranteed by it under the provisions of this act, from which no appeal, writ of error, or supersedeas has been taken for thirty days after the rendition of such judgment or decree, it shall forfeit all right to do business under this act. *Sec. 6, ibid.*

Companies estopped from denying power.
Sec. 7, *ibid.*

600. Any company which shall execute or guarantee any recognizance, stipulation, bond, or undertaking under the provisions of this act shall be estopped, in any proceeding to enforce the liability which it shall have assumed to incur, to deny its corporate power to execute or guarantee such instrument or assume such liability. *Sec. 7, ibid.*

Penalty for failure to comply with provisions.
Sec. 8, *ibid.*

601. Any company doing business under the provisions of this act which shall fail to comply with any of its provisions shall forfeit to the United States for every such failure not less than five hundred dollars nor more than five thousand dollars, to be recovered by suit in the name of the United States in the same courts in which suit may be brought against such company under the provisions of this act, and such failure shall not affect the validity of any contract entered into by such company. *Sec. 8, ibid.*

EXAMINATION AND RENEWAL OF BONDS.

602. Hereafter every officer required by law to take and approve official bonds shall cause the same to be examined at least once every two years for the purpose of ascertaining the sufficiency of the sureties thereon; and every officer having power to fix the amount of an official bond shall examine it to ascertain the sufficiency of the amount thereof and approve or fix said amount at least once in two years and as much oftener as he may deem it necessary.[1] *Sec. 5, act of March 2, 1895 (28 Stat. L., 807).*

Examination and renewal of bonds. Sec. 5, Mar. 2, 1895, v. 28, p. 807.

Hereafter every officer whose duty it is to take and approve official bonds shall cause all such bonds to be renewed every four years after their dates, but he may require such bonds to be renewed or strengthened oftener if he deem such action necessary. In the discretion of such officer the requirement of a new bond may be waived for the period of service of a bonded officer after the expiration of a four-year term of service pending the appointment and qualification of his successor.[2] *Ibid.*

Renewals. *Ibid.*

603. The nonperformance of any requirement of this section on the part of any official of the Government shall not be held to affect in any respect the liability of principal or sureties on any bond made or to be made to the United States: *Provided further*, That the liability of the principal and sureties on all official bonds shall continue and cover the period of service ensuing until the appointment and qualification of the successor of the principal: *And provided further*, That nothing in this section shall be construed to repeal or modify section thirty-eight hundred and thirty-six of the Revised Statutes of the United States. *Ibid.*

Liability of sureties. *Ibid.*

LIABILITY OF SURETIES; RELEASE.

604. Hereafter, whenever any deficiency shall be discovered in the accounts of any official of the United States, or of any officer disbursing or chargeable with public money, it shall be the duty of the accounting officers making such discovery to at once notify the head of the Department having control over the affairs of said officer

Sureties on official bonds. Notice of principal's deficiency to be communicated to securities. Aug. 8, 1888, v. 25, p. 287.

---

[1] United States district attorneys are not required or authorized to make the examination into the sufficiency of the sureties on official bonds required by section 5 of the act of March 2, 1895 (28 Stat. L., 807).

[2] The expenses incurred by an officer in furnishing the bond required by law of all disbursing officers of the Government is not a proper charge against the Government, even though the officer serves without compensation. II Compt. Dec., 262.

of the nature and amount of said deficiency, and it shall be the immediate duty of said head of Department to at once notify all obligors upon the bond or bonds of such official of the nature of such deficiency and the amount thereof. Said notification shall be deemed sufficient if mailed at the post-office in the city of Washington, District of Columbia, addressed to said sureties respectively, and directed to the respective post-offices where said obligors may reside, if known; but a failure to give or mail such notice shall not discharge the surety or sureties upon such bond.[1] *Act of August 8, 1888 (25 Stat. L., 387).*

Sureties released after five years without suit.
Sec. 2, *ibid.*

605. If, upon the statement of the account of any official of the United States, or of any officer disbursing or chargeable with public money, by the accounting officers of the Treasury, it shall thereby appear that he is indebted to the United States, and suit therefor shall not be instituted within five years after such statement of said account, the sureties on his bond shall not be liable for such indebtedness.[2] *Sec. 2, ibid.*

DEPOSIT AND SAFE-KEEPING OF THE PUBLIC MONEY.

Par.
606. Duty of disbursing officer.
607. Penalty for failure to deposit.
608. Duties of disbursing officers as custodians.
Par.
609. Exchanging of funds.
610. Premiums on exchanges to be accounted for.

Duty of disbursing officers as to public money.
June 14, 1866, c. 122, s. 1, v. 14, p. 64; Feb. 27, 1877, c. 69, v. 19, p. 249.
Sec. 3620, R. S.

606. It shall be the duty of every disbursing officer having any public money intrusted to him for disbursement to deposit the same with the Treasurer or some one of the assistant treasurers of the United States, and to draw for the same only as it may be required for payments to be made by him in pursuance of law [and draw for the same only in favor of the persons to whom payment is made]; and all transfers from the Treasurer of the United States to a disbursing officer shall be by draft or warrant on the Treasury or an assistant treasurer of the United States. In places, however, where there is no treasurer or assistant treasurer, the Secretary of the Treasury may, when he deems it essential to the public interest, specially authorize in writing the deposit of such public money in any other public depository, or, in writing, authorize the same to be kept in any other manner, and under such rules and regulations as he may deem most safe and effectual to facilitate the payments to public creditors.[1] (*See sec. 5488, R. S.*)

---

[1] For instructions respecting the recovery of balances due the United States on final settlements of bonded officers, see Vol. V, Comptrollers' Decisions, pp. 988–990; for methods of keeping and rendering accounts by disbursing officers not under bond, see ibid, pp. 990–991.

The regulations of the Treasury Department are imperative, and expressly prohibit the transfer of funds of any character for which an officer is accountable from one bond to another, and when this regulation is violated it becomes necessary for the officer to deposit the sum transferred as a credit to his first bond, or else procure the admission of the sureties on the second bond that the officer actually had the sum in hand when it was executed, and that they are liable on said bond for the same. 3 Dig. Compt. Dec., 13. See also U. S. *v.* McLane, 74 Fed. Rep., 153; U. S. *v.* Wade, 75 ibid, 261.

[2] For statutory provisions respecting distress warrants, see the chapter entitled THE TREASURY DEPARTMENT.

Penalty for failure to deposit. Mar. 3, 1858, c. 114, s. 3, v. 11, p. 249. Sec. 5, May 28, 1896, v. 29, p. 179. Sec. 3621, R. S.

607. Every person who shall have moneys of the United States in his hands or possession, and disbursing officers having moneys in their possession not required for current expenditure, shall pay the same to the Treasurer, an assistant treasurer, or some public depositary of the United States, without delay, and in all cases within thirty days of their receipt. And the Treasurer, the assistant treasurer, or the public depositary shall issue duplicate receipts for the moneys so paid, transmitting forthwith the original to the Secretary of the Treasury, and delivering the duplicate to the depositor: *Provided*, That postal revenue and debts due to the Post-Office Department shall be paid into the Treasury in the manner now required by law.[2]

---

[1] For penalty for unlawfully depositing, loaning, converting, or transferring public money see section 5488, Revised Statutes, paragraph 645, *post.*

[2] In accordance with the provisions of the above sections any public money advanced to disbursing officers of the United States must be deposited immediately to their respective credits, with either the United States Treasurer, some assistant treasurer, or by special direction of the Secretary of the Treasury with a national bank depositary nearest or most convenient, except—

(1) Any disbursing officer of the War Department specially authorized by the Secretary of War, when stationed on the extreme frontier or at places far remote from such depositaries, may keep, at his own risk, such moneys as may be intrusted to him for disbursement.

(2) Any officer receiving money remitted to him upon specific estimates may disburse it accordingly, without waiting to place it in a depositary, provided the payments are due and he prefers this method to that of drawing checks. Treas. Circ. of 1898. G. O. 59, A. G. O., 1897.

Every disbursing officer, when opening his first account, before issuing any checks, will furnish the depositary on whom checks are drawn with his official signature duly verified by some officer whose signature is known to the depositary. Ibid.

Any check drawn by a disbursing officer upon moneys thus deposited must be in favor of the party, by name, to whom the payment is to be made, and payable to "order," or "bearer," with these exceptions:

(1) To make payments of individual pensions, checks for which must be made payable to "order," (2) to make payments of amounts not exceeding twenty dollars, (3) to make payments at a distance from a depositary, and (4) to make payments of fixed salaries due at a certain period; in either of which cases except the first, any disbursing officer may draw his check in favor of himself, or "order," or "bearer," for such amount as may be necessary for such payment, but in the last-named case the check must be drawn not more than two days before the salaries become due.

Any disbursing officer or agent drawing checks on moneys deposited to his official credit, must state on the face or back of each check the object or purpose to which the avails are to be applied, except upon checks issued in payment of individual pensions, the special form of such checks indicating sufficiently the character of disbursement. If the object or purpose for which any check of a public disbursing officer is

Duties of disbursing officers as custodians of public moneys.

Aug. 6, 1846, c. 90, s. 6, v. 9, p. 60; Mar. 3, 1857, c. 114, s. 2, v. 11, p. 249; July 3, 1852, c. 54, s. 7, v. 10, p. 12; Mar. 3, 1863, c. 96, s. 5, v. 12, p. 770; July 4, 1864, c. 24, s. 5, v. 13, p. 383; Apr. 21, 1862, c. 59, s. 5, v. 12, p. 382; Feb. 18, 1869, c. 33, s. 4, v. 15, p. 271.
Sec. 3639, R.S.

608. The Treasurer of the United States, all assistant treasurers, and those performing the duties of assistant treasurer, all collectors of the customs, all surveyors of the customs, acting also as collectors, all receivers of public moneys at the several land-offices, all postmasters, and all public officers of whatsoever character, are required to keep safely, without loaning, using, depositing in banks, or exchanging for other funds than as specially allowed by law, all the public money collected by them, or otherwise at any time placed in their possession and custody, till the same is ordered, by the proper Department or officer of

---

drawn is not stated thereon, as required, or if any reason exists for suspecting fraud, the office or bank on which such check is drawn will refuse its payment.

Such statement may be made in brief form, but must clearly indicate the object of the expenditure, as, for instance, "pay," "pay roll," or "payment of troops," adding the fort or station; "purchase of subsistence" or other supplies; "on account of construction," mentioning the fortification or other public work for which the payment is made; "payments under $20," etc.

Checks will not be returned to the drawer after their payment, but the depositary with whom the account is kept shall furnish the officer with a monthly statement of his deposit account. Ibid.

No allowance will be made to any disbursing officer for expenses charged for collecting money on checks.

Whenever any disbursing officer of the United States shall cease to act in that capacity he will at once inform the Secretary of the Treasury whether he has any public funds to his credit in any office or bank, and, if so, what checks, if any, he has drawn against the same, which are still outstanding and unpaid. Until satisfactory information of this character shall have been furnished, the whole amount of such moneys will be held to meet the payment of his checks properly payable therefrom.

In case of the death, resignation, or removal of any disbursing officer, checks previously drawn by him will be paid from the funds to his credit, unless such checks have been drawn more than four months before their presentation, or reasons exist for suspecting fraud. Any check previously drawn by him and not presented for payment within four months of its date will not be paid until its correctness shall have been attested by the Secretary or Assistant Secretary of the Treasury. Ibid.

Deposits to the credit of the Treasurer of the United States on account of repayment of disbursing funds must be made with the office or bank in which such funds are to the credit of the disbursing officer. Ibid.

For every deposit made by a disbursing officer, to his official credit, a receipt in form as below shall be given, setting forth its serial number and the place and date of issue; the title of each officer shall be expressed, and the title of the disbursing account shall also show for what branch of the public service the account is kept, as it is essential for the proper transaction of departmental business that accounts of moneys advanced from different bureaus to a disbursing officer serving in two or more distinct capacities be kept separate and distinct from each other, and be so reported to the Department both by the officer and the depositary, the receipt to be retained by the officer in whose favor it is issued.

No. ——. Office of the U. S. (Assistant Treasurer or Depositary),
——, ——, 189—.

Received of ——, —— dollars, consisting of ——, to be placed to his credit as ——, and subject only to his check in that official capacity.

$——. —— ——,
United States (Assistant Treasurer or Depositary.)

These regulations are intended to supersede those of August 24, 1876. Ibid. (See G. O. 59, A. G. O., 1897.)

A disbursing officer who deposits money in a bank, not designated as a depository in accordance with the requirements of sections 3620 and 3639 of the Revised Statutes, is liable, with his sureties, for any loss that may arise from the failure of said bank. XX Opin. Att. Gen., 24.

the Government, to be transferred or paid out; and when such orders for transfer or payment are received, faithfully and promptly to make the same as directed, and to do and perform all other duties as fiscal agents of the Government which may be imposed by any law, or by any regulation of the Treasury Department made in conformity to law. The President is authorized, if in his opinion the interest of the United States requires the same, to regulate and increase the sums for which bonds are, or may be, required by law, of all district attorneys, collectors of customs, naval officers, and surveyors of customs, navy agents, receivers and registers of public lands, paymasters in the Army, commissary-general, and by all other officers employed in the disbursement of the public moneys, under the direction of the War or Navy Departments.

EXCHANGES OF FUNDS.

Exchange of funds restricted.

Aug. 6, 1846, c. 90, s. 20, v. 9, p. 64; Feb. 22, 1862, c. 33, s. 1, v. 12, p. 345; July 11, 1862, c. 142, s. 1, v. 12, p. 532; Mar. 3, 1863, c. 73, s. 3, v. 12, p. 710; June 3, 1864, c. 106, s. 23, v. 13, p. 106.

Sec. 3651, R. S.

609. No exchange of funds shall be made by any disbursing officer or agent of the Government, of any grade or denomination whatsoever, or connected with any branch of the public service, other than an exchange for gold, silver, United States notes, and national-bank notes; and every such disbursing officer, when the means for his disbursements are furnished to him in gold, silver, United States notes, or national-bank notes, shall make his payments in the money so furnished; or when they are furnished to him in drafts, shall cause those drafts to be presented at their place of payment, and properly paid according to law, and shall make his payments in the money so received for the drafts furnished, unless, in either case, he can exchange the means in his hands for gold and silver at par. And it shall be the duty of the head of the proper Department immediately to suspend from duty any disbursing officer or agent who violates the provisions of this section, and forthwith to report the name of the officer or agent to the President, with the fact of the violation, and all the circumstances accompanying the same, and within the knowledge of the Secretary, to the end that such officer or agent may be promptly removed from office or restored to his trust and the performance of his duties, as the President may deem just and proper.

Premium on sales of public moneys to be accounted for.

Aug. 6, 1846, c. 90, s. 21, v. 9, p. 65.

Sec. 3652, R. S.

610. No officer of the United States shall, either directly or indirectly, sell or dispose of to any person, for a premium, any Treasury note, draft, warrant, or other public security, not his private property, or sell or dispose of the avails or proceeds of such note, draft, warrant, or security, in his hands for disbursement, without making return of such premium, and accounting therefor by charging the same in his accounts to the credit of the United States; and any officer violating this section shall be forthwith dismissed from office.

PROCEEDS OF SALES.

Par.
611. Gross proceeds to be deposited in the Treasury.
612. The same, exceptions.
613, 614. The same, application of proceeds.
Par.
615. The same, subsistence funds.
616. Expenses of sales.

Proceeds of sales to be deposited without deduction.
Mar. 3, 1849, c. 110, s. 1, v. 9, p. 398; Sept. 28, 1850, c. 78, s. 3, v. 9, p. 507.
Sec. 3617, R. S.

611. The gross amount of all moneys received from whatever source for the use of the United States, except as otherwise provided in the next section, shall be paid by the officer or agent receiving the same into the Treasury, at as early a day as practicable, without any abatement or deduction on account of salary, fees, costs, charges, expenses, or claim of any description whatever.[1] But nothing herein shall affect any provision relating to the revenues of the Post-Office Department.

Proceeds of sales of materials.
May 3, 1872, c. 140, s. 5, v. 17, p. 83; Apr. 20, 1866, c. 63, ss. 1, 2, v. 14, p. 40; Mar. 3, 1847, c. 48, s. 1, v. 9, p. 171; July 28, 1866, c. 299, s. 25, v. 14, p. 336; June 8, 1872, c. 348, v. 17, p. 337; Feb. 27, 1877, v. 19, p. 249.
Sec. 3618, R. S.

612. All proceeds of sales of old material, condemned stores, supplies, or other public property of any kind, except the proceeds of the sale or leasing of marine hospitals, or of the sales of revenue-cutters, or of the sales of commissary stores to the officers and enlisted men of the Army, or of materials, stores, or supplies sold to officers or soldiers of the Army, or of the sale of condemned Navy clothing, or of sales of materials, stores, or supplies to any exploring or surveying expedition authorized by law, shall be deposited and covered into the Treasury as miscellaneous receipts, on account of "proceeds of Government property," and shall not be withdrawn or applied, except in consequence of a subsequent appropriation made by law.[1]

---

[1] Under section 3618 of the Revised Statutes, all proceeds of sales of old material, condemned stores, supplies, or other public property of any kind, with certain specified exceptions, are to be deposited and covered into the Treasury as miscellaneous receipts on account of "proceeds of Government property," and are not to be withdrawn or applied, except in consequence of a subsequent appropriation made by law. 3 Dig. 2nd Compt. Dec., 1249.

All proceeds of sales of public property covered into the Treasury as miscellaneous receipts should be charged and credited on account of "proceeds of Government property," as contemplated by section 3618 of the Revised Statutes. Ibid., 1255.

The proceeds of sales of all public property, the disposition of which is not provided for by the preceding paragraph, after the expenses of sale have been deducted, will be deposited to the credit of the Treasurer of the United States as "Miscella-

613. All moneys received from the leasing or sale of marine hospitals, or the sale of revenue cutters, or from the sale of commissary stores to the officers and enlisted men of the Army, [or from the sale of materials, stores, or supplies sold to officers and soldiers of the Army,] or from sales of condemned clothing of the Navy, or from sales of materials, stores, or supplies to any exploring or surveying expedition authorized by law, shall respectively revert to that appropriation out of which they were originally expended, and shall be applied to the purposes for which they are appropriated by law.[1]

Proceeds of certain sales, etc., of material.
Mar. 3, 1847, c. 48, s. 1, v. 9, p. 171; Apr. 20, 1866, c. 63, ss. 1, 2, v. 14, p. 40; July 28, 1866, c. 299, s. 25, v. 14, p. 336; May 8, 1872, c. 140, s. 5, v. 17, p. 83; June 8, 1872, c. 348, v. 17, p. 337; Mar. 3, 1875, c. 130, v. 18, p. 388; Mar. 3, 1875, c. 131, v. 18, p. 410; Feb. 27, 1877, c. 69, v. 19, p. 249.
Sec. 3692, R. S.

614. The Secretary of the Navy is authorized to dispose of the useless ordnance material on hand at public sale, according to law, the net proceeds of which shall be turned into the Treasury; * * * and in the case of sale of like materials in the War Department, the proceeds of which shall be turned into the Treasury, an amount equal to the net proceeds of such sale is hereby appropriated for the purpose of procuring a supply of material adapted in manufacture and caliber to the present wants of the war service; and there shall be expended in the War Department, under this provision, not more than seventy-five thousand dollars in any one year. *Act of March 3, 1875* (*18 Stat. L., 388*).

Sales of useless ordnance; proceeds available for purchases of new material.
Ch. 130, Mar. 3, 1875, v. 18, p. 388.

Hereafter the cost to the Ordnance Department of all ordnance and ordnance stores issued to the States, Territories, and District of Columbia, under the act of February twelfth, eighteen hundred and eighty-seven, shall be credited to the appropriation for "manufacture of arms at national armories," and used to procure like ordnance

Arms for militia.
Mar. 2, 1889, v. 25, p. 833.

---

neous receipts on account of proceeds of Government property," for which certificates of deposit will issue, showing the name, rank, regiment or corps of the depositor, the nature of the deposit, the kind of property, and the bureau to which it pertained. Par. 697, A. R., 1901.

The transfer of public property from one bureau or Department of the Government to another is not a sale, and the money received therefor may be repaid to the appropriation from which it was originally expended. IV Compt. Dec., 688.

The transfer of public property from one bureau or Department to another is not regarded as a sale. If money is received therefor, it may be used to replace such stores and will be reported accordingly. Par. 698, A. R., 1901.

[1] Moneys received for stores, materials, or supplies (except subsistence stores) sold to officers, enlisted men, or exploring or surveying expeditions authorized by law will be deposited to the credit of the Treasurer of the United States, and respectively revert to the appropriation out of which originally expended. Proceeds of sales of useless ordnance material are expended under conditions prescribed by law. Proceeds of sales of subsistence supplies are immediately available for the purchase of fresh supplies. Par. 696, A. R., 1901. Under section 3692 of the Revised Statutes all moneys received from the sale of materials, stores, or supplies to officers and soldiers of the Army can be applied to the liquidation of liabilities against the appropriation out which they were originally expended, only during the fiscal year in which the sale was made. 3 Dig. 2nd Compt. Dec., 1246.

stores, and that said appropriation shall be available until exhausted, not exceeding two years. *Act of March 2, 1889 (25 Stat. L., 833).*

Appropriations for subsistence available for purchase of stores for sale to officers, etc.
Proceeds of sales available for similar purchases.
Ch. 130, Mar. 3, 1875, v. 18, p. 410.

615. So much of the appropriation for subsistence of the Army as may be necessary may be applied to the purchase of subsistence stores for sale to officers for the use of themselves and their families and to commanders of companies or other organizations, for the use of the enlisted men of their companies or organizations, and the proceeds of all sales of subsistence supplies shall hereafter be exempt from being covered into the Treasury and shall be immediately available for the purchase of fresh supplies. *Act of March 3, 1875 (18 Stat. L., 410).*

Expenses of sales.
June 8, 1896, v. 29, p. 268.

616. From the proceeds of sales of old material, condemned stores, supplies, or other public property of any kind, before being deposited into the Treasury, either as miscellaneous receipts on account of "proceeds of Government property" or to the credit of the appropriations to which such proceeds are by law authorized to be made, there may be paid the expenses of such sales, as approved by the accounting officers of the Treasury, so as to require only the net proceeds of such sales to be deposited into the Treasury, either as miscellaneous receipts or to the credit of such appropriations, as the case may be.[1] *Act of June 8, 1896 (29 Stat. L., 268).*

DISBURSEMENTS.

Par.
617, 618. Advances.
619. No expenditures beyond appropriations.
620. Application of appropriations.
621. Entry of receipts and disbursements.
Par.
622. Accounting by items.
623. Amount of appropriation, how determined.
624. Disposition of balances.

Advances of public money prohibited.
Jan. 31, 1823, v. 3, p. 723.
Sec. 3648, R. S.

617. No advance of public money shall be made in any case whatever. And in all cases of contracts for the performance of any service, or the delivery of articles of any description, for the use of the United States, payment shall not exceed the value of the service rendered, or of the articles delivered previously to such payment.[1] It shall, however, be lawful, under the special direction of the President, to make such advances to the disbursing officers of the Government as may be necessary to the faithful and prompt discharge of their respective duties, and to the fulfillment of the public engagements. The President may also direct such advances as he may deem necessary and proper to persons in the military and naval service employed on distant stations, where the discharge of the pay and emoluments to which they are entitled can not be regularly effected.

---

[1] The act of June 8, 1896, authorizing the payment of expenses, "as approved by the accounting officers of the Treasury," incurred in the sale of old material, etc., from the gross proceeds thereof, and the payment into the Treasury of the net proceeds only, does not require that such expenses shall be so approved before payment, but simply that an itemized account thereof shall be rendered to the accounting officers for settlement as any other item of expenditure of Government funds. III Compt. Dec., 149. The course authorized by the act of June 8, 1896, in the payment of expenses of sales of old materials from the proceeds thereof, and the deposit in the Treasury of the net proceeds only, should be adopted in all cases, although there may be an appropriation available for the payment of expenses incurred in such sales. Ibid., 190.

Advance to troops to embark for Philippine Islands.
July 7, 1898, v. 50, p. 721.

618. Troops about to embark for service in the Philippine Islands may, in the discretion of the Secretary of War, be paid one month's wages in advance prior to embarkation. *Act of July 7, 1898 (30 Stat. L., 721).*

No expenditures beyond appropriations.
July 12, 1870, c. 251, s. 7, v. 16, p. 251.
Sec. 3679, R. S.

619. No Department of the Government shall expend, in any one fiscal year, any sum in excess of appropriations made by Congress for that fiscal year, or involve the Government in any contract for the future payment of money in excess of such appropriations.[2]

Applications of moneys appropriated.
Mar. 3, 1809, c. 28, s. 1, v. 2, p. 535.
Feb. 12, 1868, c. 8, s. 2, v. 15, p. 36.
Sec. 3678, R. S.

620. All sums appropriated for the various branches of expenditure in the public service shall be applied solely to the objects for which they are respectively made and for no others.[3]

---

[1] In the case of disbursing officers the policy of the Government has been to acknowledge no payments as made on its behalf save those which are authorized by law. If an officer makes a mistake of law the payment is disallowed when his accounts come in for settlement and charged to him as if the money were still in his hands. McKim *v.* U. S., 12 Ct. Cls., 504, 532. Such officers are special agents with very limited authority. Their duties are ministerial; they are to pay the money according to the law and the facts in each case, and if they make mistakes in either they are personally liable themselves, and the Government may also, without doubt, maintain an action to recover back the money from the person wrongfully receiving it. No discretion or authority to decide controverted questions of law is intrusted to such officers. See dissenting opinion of Richardson, J., in McKee *v.* U. S., 12 Ct. Cls., 504, 551.

A disbursing officer is prohibited by section 3648, Revised Statutes, from paying more than a proper proportion of the entire contract price agreed upon for the transportation of public property when only a portion of the property has been delivered. III Compt. Dec., 221. See, also, ibid., 187.

An advance of public money made by a paymaster of the Army to an officer ordered to a distant station, when made by direction of the President as provided by section 3648 of the Revised Statutes, to provide for the pay of such officer for a future period, is not a payment for services for the correctness of which the paymaster is responsible, but an advance of public money to the officer in question for which he, and not the paymaster, is accountable to the United States. IV ibid., 250.

The payment of express charges in advance is prohibited by this section. Ibid, 544.

[2] When an appropriation found in an annual appropriation act is made for the purpose of carrying out the provisions of another law requiring immediate action, such appropriation is available prior to the beginning of the fiscal year for the service of which the other appropriations made in the act are intended. I Compt. Dec., 329. See, also, ibid., 487.

[3] When Congress makes an appropriation for a particular object, that appropriation is exclusive, and another appropriation which but for the specific appropriation

Entry of each deposit, transfer, and payment. Aug. 6, 1846, c. 90, s. 10, v. 9, p. 63. Sec. 3643, R.S.

621. All persons charged by law with the safe keeping, transfer, and disbursement of the public moneys, other than those connected with the Post-Office Department, are required to keep an accurate entry of each sum received and of each payment or transfer.

---

might be available can not be used. I Compt. Dec., 563. When one appropriation is available for a specific object a second appropriation can not be used for the same work, unless from the second appropriation it clearly appears that it was the intention of Congress that such second appropriation should be available in addition to the specific appropriation. Ibid., 417. When an appropriation to which an expense is properly chargeable is exhausted, another appropriation can not be used. (Ibid., 492.

PECUNIARY RESPONSIBILITY OF OFFICERS.

An officer will have credit for an expenditure of money made in obedience to the order of his commanding officer. Every order issued by any military authority which may cause an expenditure of money in a staff department will be given in writing. One copy thereof will be forwarded by the officer receiving it to the head of his Department, and the other will be filed by the disbursing officer with his voucher for the disbursement. If the expenditure be disallowed it will be charged to the officer who ordered it. Par. 735, A. R., 1901.

Where purchases of army supplies are made in pursuance of an order issued by competent military authority, said order, or a certified copy thereof, should be filed with the first voucher on which payment for supplies is made and reference be made thereto on all the others. 3 Compt. Dec., 1, 287.

Where there is a plain direction or prohibition spread upon the statute books, which is as well known to the inferior as to a superior officer, it is clearly binding upon both officers, and unless it can be affirmatively shown that the inferior called the attention of the superior to the infringement of law in the order, and that thereupon the superior renewed the order, the inferior officer must be held liable. III Dig. Dec. 2d Compt., 9, par. 3.

If a payment made on the certificate of an officer as to the facts is afterwards disallowed for error of fact in the certificate, it will pass to the credit of the disbursing officer and be charged to the officer who gave the certificate; but the disbursing officer can not protect himself in an erroneous payment made without due care by charging lack of care against the officer who gave the certificate. Par. 736, Army Regulations of 1901.

Paragraph 654 of the Army Regulations of 1895 provides that accounts paid on a certificate and afterwards disallowed for error of fact in the certificate shall pass to the credit of the disbursing officer and be charged to the officer who gave the certificate: *Held,* That it is the duty, however, of the disbursing officer to exercise the utmost care and vigilance in the disbursement of the public funds intrusted to him, and it is his imperative duty to see that the entire amount claimed is due and that payment thereof is fully warranted from the data given on the muster roll or final statement. If the information is not sufficient he must seek for more. He can not protect himself, in an erroneous payment made without due care, by charging a similar lack of care against the officer who gave the certificate. III Dig. 2d Compt. Dec., 10, par. 9.

RULES FOR THE PREPARATION OF VOUCHERS.

1. Vouchers must be stated in the name of the person, firm, company, or corporation rendering the service or furnishing the articles for which payment is made.

2. If the payee be a firm, the receipt to the voucher should be in the usual firm signature, signed by a member of the firm; if an incorporated or unincorporated company, the receipt should be in the company name, followed by the autograph signature of the officer (with his title) authorized to receive the money and receipt therefor.

3. Evidence of the authority of the officer receipting for an incorporated or unincorporated company must accompany the voucher, unless the payment is made by a check drawn on a United States depository *to the order of the company,* and that fact, with the date and number of the check and name of the depository, is stated in the voucher.

4. When a disbursing officer is satisfied that an attorney or agent is authorized to receipt for his principal, whether an individual, firm, company, or corporation, the

622. Hereafter all officers, agents, or other persons receiving public moneys appropriated by this or any subsequent Army appropriation act shall account for the disbursement thereof according to the several and distinct items of appropriation expressed in such act. *Act of July 5, 1884* (*23 Stat. L., 113*).

Accounting by items.
July 5, 1884, v. 23, p. 113.

receipt of the principal by the attorney or agent will be sufficient, without proof of authority accompanying the voucher, provided that payment is made by a check drawn on a United States depository *and payable to the order of the principal*, and the memorandum required in the preceding paragraph is made upon the voucher.

5. These regulations will not affect any additional regulations of the several Departments, but are intended as a statement of all that is required by the accounting officers as proof that payments are made to the proper persons. Regulations of the Comptroller of the Treasury of May 20, 1896; II Compt. Dec., 666; G. O. 37, A. G. O., 1896.

The word "voucher" can not be construed as synonymous with the word "receipt," it having a far broader signification in law. Any written evidence which establishes facts entitling a disbursing officer to credit is a voucher. "The word 'voucher' would seem to imply evidence, written or otherwise, of the truth of a fact." The People *v.* Green, 5 Daly, N. Y., 194; 3 Compt. Dec., 378.

MONEY VOUCHERS. (*a*)

The term "voucher," when used in connection with the disbursement of moneys, implies some written or printed instrument in the nature of a receipt, note, account, bill of particulars, or something of that character, which shows on what account or by what authority a particular payment has been made, and which may be kept or filed away, by the party receiving it, for his own convenience or protection, or that of the public. People *v.* Brinkerhoff 107, Ill., 495.

The presentation by a disbursing officer of a voucher properly receipted by the person entitled to payment is but *prima facie* evidence of actual payment by him, and will not entitle him to credit unless the amount has been actually paid to the proper person or his representative. I Compt. Dec., 228. The receipt of a witness to a pay roll is valid although written with a pencil, and not with ink, as required by the regulations and practice of the Department. Ibid., 419.

What shall be considered proper vouchers and the extent and character of the evidence necessary to support a claim must, of course, depend upon the circumstances of each case. I think, however, that the term "proper vouchers" must be construed to mean the vouchers ordinarily required in the transaction of business of this character. Presumptions should not be accepted in the place of proof where the latter can be procured. V Compt. Dec., 140. See, also, VI ibid., 14, 97.

Every voucher signed on behalf of any person, firm, or corporation by an agent or attorney should bear the name of the proper firm, person, or corporation, followed by the name of the agent or attorney. 3 Dig. 2d Compt. Dec., 379.

Under a resolution of the executive committee of the Western Union Telegraph Company passed November 24, 1886, any person in charge of any office of said company is authorized to receive and receipt for payments to said company, and receipts by such persons for such payments are to be held as binding upon said company. Ibid.

Section 3477 of the Revised Statutes does not prohibit a disbursing officer from accepting the receipt of an agent or attorney of an individual, firm, or corporation, and receiving credit for a voucher so receipted, provided it appears thereon that the check issued in payment was made payable to the order of the individual, firm, or corporation. 2 Compt. Dec., 295.

An order from the court appointing a receiver and showing his authority to act as such should be filed with or referred to in every voucher or claim presented by him for payment. 3 Dig. 2d Compt. Dec., 378.

Receipts for small amounts for occasional service paid to corporations, such as railroad, telegraph, turnpike, transfer, express, steamboat, hotel, newspaper, and ice companies, may be signed by the local agent in charge of the business of the company at the place where the service is rendered, or where it begins or terminates,

---

[a] For provisions of Army Regulations in respect to the preparation and execution of vouchers, se paragraphs 631–652, Army Regulations of 1895.

Total amount of appropriation, how determined. May 28, 1896, v. 29, p. 148.

623. Hereafter the total amount appropriated in the various paragraphs of an appropriation act shall be determined by the correct footing up of the specific sums or rates appropriated in such paragraph contained therein unless otherwise expressly provided. *Act of May 28, 1896 (29 Stat. L., 140, 148).*

Expenditure of balances of appropriations. 12 July 1870, c. 251 s. 5, v. 16, p. 251. Sec. 3690 R. S.

624. All balances of appropriations contained in the annual appropriation bills and made specifically for the service of any fiscal year shall only be applied to the payment of expenses properly incurred during that year, or to the fulfillment of contracts properly made within that year; and balances not needed for such purposes shall be

---

and the certificate of the officer making payment that the person to whom payment was thus made was then the local agent of the company, in charge of its business at the place designated, will be sufficient evidence of the agent's authority to receive and receipt for the money paid. Ibid.

The term "small amounts," as used in the Second Comptroller's decision of March 14, 1887, applies only to occasional payments of amounts deemed too insignificant to justify the Government in demanding written evidence of an agent's authority to receive and receipt for moneys, in accordance with the general rule. Ibid.

All vouchers in support of payments of percentages retained under contracts must be accompanied, as contemplated by section 277 of the Revised Statutes, by satisfactory evidence, either primary or secondary, that the several amounts thereon paid have been retained, have since become payable, and have not previously been paid. Ibid., 379.

Hereafter vouchers in support of partial payments, or vouchers on which the retention of percentages are noted, must be made in triplicate instead of duplicate. One of said vouchers is to be retained by the disbursing officer and the other two to be transmitted with his accounts to the accounting officers. The two vouchers so transmitted are to be examined and compared when the officer's accounts are adjusted and settled, one of them to be subsequently withdrawn by the Auditor and filed as a subvoucher with and in support of the voucher on which the final payment is made. Ibid.

It will be deemed a sufficient compliance with the requirement as to vouchers in support of partial payments, including those on which percentages are retained, if the vouchers intended to be withdrawn by the Third Auditor, after the necessary action of the accounting officers thereon and filed as subvouchers with the proper vouchers in support of final payments, be made without receipts and without copies of any subvouchers which may be filed with the original vouchers, but complete in all other respects and certified to by the proper officers. Ibid.

Vouchers on which percentages are retained, and which might otherwise be suspended under the decisions relating to such vouchers, may be passed to the credit of the disbursing officer or agent rendering them when the vouchers on which the retained percentages are paid are embraced in the same settlement with those on which the percentages are retained. Ibid., 380.

When a payment has been made to correct an error appearing in a previous voucher, the voucher on which the error was made, or other sufficient evidence of the error, should be transmitted with the accounts in which the disbursing officer claims credit. Ibid.

It is within the power of the accounting officers, in the settling of accounts of disbursing officers, where it appears that an expenditure has been made from the wrong appropriation, if the expenditure be right in itself and correct otherwise, to charge the amount to the appropriation for which the expenditure is liable. If at the time of the settlement the appropriation to which the expenditure is chargeable is exhausted, the amount should be disallowed against the disbursing officer, and he should be required to apply to Congress for relief. 3 ibid., 36.

Where one Department receives from another Department supplies which are within the scope of appropriations belonging to each a reimbursement of the appropriation of the one from the appropriation of the other, of the cost of the supplies, is not a violation of section 3678, Revised Statutes; nor do the provisions of section 3618, Revised Statutes, apply to such case. XVII Opin. Att. Gen., 480.

carried to the surplus fund. This section, however, shall not apply to appropriations known as permanent or indefinite appropriations.[1]

INSPECTION OF DISBURSEMENTS.

Par.
625. Method and scope of inspection.
Par.
626. Reports to Congress.

Inspection of disbursements.
Apr. 20, 1874, v. 18, p. 33.

625. It shall be the duty of the Secretary of War to cause frequent inquiries to be made as to the necessity, economy, and propriety of all disbursements made by disbursing officers of the Army, and as to their strict conformity to the law appropriating the money; also to ascertain whether the disbursing officers of the Army comply with the law in keeping their accounts and making their deposits; such inquiries to be made by officers of the inspection department of the Army, or others detailed for that purpose: *Provided*, That no officer so detailed shall be in any way connected with the department or corps making the disbursement.[2] *Act of April 20, 1874 (18 Stat. L., 33.)*

To be reported to Congress.
Sec. 2, *ibid.*

626. That the reports of such inspections shall be made out and forwarded to Congress with the annual report of the Secretary of War. *Sec. 2, ibid.*

DECISIONS BY COMPTROLLER IN ADVANCE OF PAYMENT.

Advance decisions by the Comptroller.
July 31, 1894, s. 8, v. 28, p. 208.

627. Disbursing officers, or the head of any Executive Department, or other establishment not under any of the Executive Departments, may apply for, and the Comptroller shall render, his decision upon any question involving a payment to be made by them or under them, which decision, when rendered, shall govern the Auditor and the Comptroller of the Treasury in passing upon the account containing said disbursement.[3] *Sec. 8, act of July 31, 1894 (28 Stat. L., 208).*

---

[1] A proposal in writing to furnish supplies and a written acceptance by the authorized agent of the Government constitute a contract within the meaning of section 3690 of the Revised Statutes, so as to authorize the use of an appropriation for the fiscal year in which the contract is made in paying for such portion of the supplies as are delivered under the contract after the expiration of the fiscal year. II Compt. Dec., 248.

[2] See paragraphs 977 and 978, Army Regulations of 1901.

[3] Paragraph 6, section 8, of the act of July 31, 1894, does not authorize the Comptroller to render a decision in advance of the settlement of accounts, except upon questions presented by *disbursing officers* or the *heads of Executive Departments* involving payments to be made by them. 1 Compt. Dec., 1; see also ibid., p. 87; 139, 411, 431, 500; III ibid., 529; IV ibid., 332. Nor is the Comptroller authorized to render such advance decision until the head of a Department, having control of an appropriation, determines to apply it to a particular purpose. 1 ibid., 89. The Comptroller has no jurisdiction to entertain such an application when made by the head

ASSIGNMENTS OF CLAIMS, POWERS OF ATTORNEY.

Assignments of claims void, unless, etc.
Feb. 26, 1853, c. 81, s. 1, v. 10, p 170; July 29, 1846 c. 66, v. 9, p. 41.
Sec. 3477, R. S.

628. All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments, and powers of attorney must recite the warrant for payment, and must be acknowledged by the person making them, before an officer having authority to take acknowledgments of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgment, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same.[1]

---

of a *bureau* in an Executive Department. 1 ibid., 199. Nor when the request comes from the head of one Executive Department in respect to an appropriation under the head of another Executive Department. 1 ibid., 317.

Requests for the decision of the Comptroller, under section 8 of the act of July 31, 1894, must be made by the disbursing officer himself and not by an attorney authorized to represent him in the settlement of his accounts. I ibid., 502.

When an expense has not yet been incurred, and a decision of the Comptroller is desired for the guidance of a Department, the request therefor should be presented by the head of the Department having control of the appropriation, and not by the disbursing officer. I ibid., 500.

The Comptroller of the Treasury is not authorized to render decisions to disbursing officers upon questions of law pertaining to payments which have been made by them. V Comp. Dec., 727.

The Comptroller of the Treasury is not authorized to render to the heads of Departments advisory opinions upon questions of law not involving payments to be made by or under them. Ibid., 653.

A statement by the Comptroller of the Treasury in an advance decision, upon a statement of facts submitted by a disbursing officer, which is broader than the facts stated rendered necessary, is a mere *dictum* and is not binding upon the Auditor or the Comptroller in the settlement of the account of the disbursing officer. V ibid., 562.

Under the act of July 31, 1894, the *Auditors* of the Treasury are not authorized to render decisions in advance of the settlement of accounts, such authority being, by section 8 of said act, granted only to the Comptroller of the Treasury. I ibid., 94.

[1] The accounting officers of the Treasury will not approve powers of attorney to demand and receive moneys due upon claims against the United States when such powers are not executed in accordance with the provisions of section 3477 of the Revised Statutes. 1 Compt. Dec., 142. Section 3477 of the Revised Statutes, making null and void all assignments and powers of attorney to collect any claim or demand against the Government (unless the power of attorney is given after the settlement of the claim and the issuance of the warrant in payment) applies to liquidated, certain, and undisputed demands as well as to those which are unliquidated, uncertain, or disputed. Ibid., 276. Under the decisions of the courts the accounting officers are required, notwithstanding the provisions of section 3477 of the Revised Statutes, to credit disbursing officers with payments actually made by them under powers of attorney, provided it is shown that, at the time of such payment, such

COUNTERFEIT MONEY.

Fraudulent notes to be stamped as "counterfeit."
Sec. 5, June 30, 1876, v. 19, p. 64.

629. All United States officers charged with the receipt or disbursement of public moneys, and all officers of national banks, shall stamp or write in plain letters the word "counterfeit," "altered," or "worthless" upon all fraudulent notes issued in the form of and intended to circulate as money which shall be presented at their places of business; and if such officers shall wrongfully stamp any genuine note of the United States, or of the national banks, they shall, upon presentation, redeem such notes at the face value thereof. *Sec. 5, act of June 30, 1876 (19 Stat. L., 64).*

PRESENTATION OF DRAFTS.

Regulations for presentation of drafts.
Ibid., s. 31, p. 65.
Sec. 3645, R. S.

630. It shall be the duty of the Secretary of the Treasury to issue and publish regulations to enforce the speedy presentation of all Government drafts, for payment, at the place where payable, and to prescribe the time, according to the different distances of the depositaries from the seat of government, within which all drafts upon them, respectively, shall be presented for payment, and, in default of such presentation, to direct any other mode and place of payment which he may deem proper; but, in all these regulations and directions, it shall be his duty to guard, as far

---

powers are undisputed and have not been revoked, either by the voluntary action of the principal or by his death. Ibid., 142, 431.

The assignment of a quartermaster's voucher, unless made "after the allowance of such a claim" and in conformity with all the other requirements of section 3477 of the Revised Statutes, is "absolutely null and void." The exigencies of the war and of the Government service immediately after the war, which at one time were relied upon to support the practice of paying the assignees of such vouchers, can not be made available in deciding cases now arising. 3 Dig. 2nd Compt. Dec., 156.

Transfers and assignments of claims.—The restrictions of the Comptroller of the Treasury in regard to the allowance of credits to disbursing officers for payments made by them on powers of attorney or other forms of transfer or assignment being so great as to amount practically to a prohibition of such payments, disbursing officers will refuse to pay the assignee of any claim, except as to assignments authorized by paragraphs 1300 and 1388 of the Army Regulations of 1895.

When claims or vouchers which have been assigned are presented for payment, the holders will be informed that disbursing officers have no authority to make payments to them as assignees, and that payments can only be made to the original persons to whom the money is due. Decision Asst. Sec. War, Nov. 7, 95—27033, A. G. O., 95. Circ. 13, A. G. O., 1895.

Assignments of pay by officers and enlisted men.—The assignment of their pay accounts by any officers, after the same become due, is authorized by paragraph 1300, Army Regulations of 1895, and is legal. III Second Compt. Dec., 45; ibid., 47. Such transfers are accomplished in accordance with paragraphs 1300 and 1388, Army Regulations of 1895. For a full discussion of the subject of assignments see notes to paragraph 196 *ante*.

Attachments.—An attachment can not be enforced against public money in the hands of a disbursing officer of the Government, and he is authorized to pay the Government's creditor without regard to such attempted levy. I Compt. Dec., 171; Buchanan *v.* Alexander, 4 How., 20.

as may be, against those drafts being used or thrown into circulation as a paper currency or a medium of exchange. (*See secs. 5495, 5496, R. S.*)

LOST CHECKS—DUPLICATE CHECKS.

Check lost, stolen, or destroyed may be duplicated, but not for sum exceeding $2,500.
Feb. 16, 1885, v. 23, p. 306.
Sec. 3646, R. S.

631. Whenever any original check is lost, stolen, or destroyed, disbursing officers and agents of the United States are authorized, after the expiration of six months, and within three years from the date of such check, to issue a duplicate check; and the Treasurer, assistant treasurers, and designated depositaries of the United States are directed to pay such duplicate checks, upon notice and proof of the loss of the original checks, under such regulations in regard to their issue and payment, and upon the execution of such bonds, with sureties, to indemnify the United States, as the Secretary of the Treasury shall prescribe. This section shall not apply to any check exceeding in amount the sum of twenty-five hundred dollars.[1] *Act of February 16, 1895 (23 Stat. L., 306).*

Duplicate check when issuing officer is dead.
Feb. 7, 1872, c. 12, s. 2, v. 17, p. 29.
Sec. 3647, R. S.

In case the disbursing officer or agent by whom such lost, destroyed, or stolen original check was issued is dead, or no longer in the service of the United States, it shall be the duty of the proper accounting officer, under such regulations as the Secretary of the Treasury shall prescribe, to state an account in favor of the owner of such original check for the amount thereof, and to charge such amount to the account of such officer or agent.[1]

ACCOUNTS AND ACCOUNTING.

Par.
632. Accounts settled in the Treasury.
633. Forms of accounts.
Par.
634. Rules by heads of departments.
635. The fiscal year.

Accounts to be settled in the Treasury.
Sec. 236, R. S.

632. All claims and demands whatever by the United States or against them, and all accounts whatever in which the United States are concerned, either as debtors or as creditors, shall be settled and adjusted in the Department of the Treasury.

---

[1] The following paragraph of the Army Regulations of 1901 prescribes a method of procedure in the case of a check which has been lost or destroyed:

"When an original check of a disbursing officer, not exceeding $2,500 in amount, has been lost or destroyed, a duplicate check may be issued by him, after six months and within three years of the date of the original, upon the owner filing with him the notice and proof of loss and the indemnity bond required by sections 3646 and 3647, Revised Statutes, and act of February 16, 1885. In case the disbursing officer who issued the original check is no longer in the service, the notice and proof of loss and the indemnity bond will be sent to the Secretary of the Treasury prior to the issue of a duplicate check. The proper accounting officer of the Treasury will state an account in favor of the owner of said check and charge the amount thereof to the account of such officer. Instructions for the execution and use of the affidavit and bond, and the issue of the duplicate check, accompany the blank form furnished by the Treasury Department." Par. 681.

FORMS OF KEEPING AND RENDERING ACCOUNTS.

633. The Comptroller of the Treasury shall, under the direction of the Secretary of the Treasury, prescribe the forms of keeping and rendering all public accounts, except those relating to the postal revenues and expenditures therefrom [1] *Sec. 5, act of July 31, 1894 (28 Stat. L., 206).*

Comptroller to prescribe forms, etc. July 31, 1894, s. 5, v. 28, p. 206.

634. It shall also be the duty of the heads of the several Executive Departments, and of the proper officers of other Government establishments not within the jurisdiction of any Executive Department, to make appropriate rules and regulations to secure a proper administrative examination of all accounts sent to them, as required by section twelve of this act, before the transmission to the Auditors, and for the execution of other requirements of this act in so far as the same relate to the several Departments or establishments.[2] *Sec. 22, act of July 31, 1894 (28 Stat. L., 206).*

Rules, etc., by heads of Departments, etc. July 31, 1894, s. 22, v. 28, p. 206.

635. The fiscal year of the Treasury of the United States in all matters of accounts, receipts, expenditures, estimates, and appropriations, except accounts of the Secretary of the Senate for compensation and traveling expenses of Senators, and accounts of the Sergeant-at-Arms of the House of Representatives for compensation and mileage of Members and Delegates, shall commence on the first day of July in each year; and all accounts of receipts and

Commencement of fiscal year. Oct. 1, 1890, s. 9, v. 26, p. 646. Sec. 237, R. S.

---

[1] For other statutory provisions in respect to accounts, see the titles "*The Comptroller of the Treasury*" and "*The Auditors of the Treasury,*" in the chapter entitled THE DEPARTMENT OF THE TREASURY.

Public accounts, within the meaning of section 5 of the act of July 31, 1894, which provides that the Comptroller of the Treasury shall "prescribe the form of keeping and rendering all public accounts," are accounts in which the United States is concerned either as debtor or creditor. VI Compt. Dec., 35.

Our scheme of government includes an accounting system, with proper officers thereof, and it seems reasonable to conclude that when the law provides for an accounting, and makes no special provision therefor, it was the legislative intent that the accounting should be done in the usual manner—that is, by the accounting officers of the Treasury Department. Ibid., 283, 284.

The act of July 31, 1894, specifically devolves upon the accounting officers of the Treasury the particular duties of examining the public accounts and certifying balances arising thereon; and their exercise of those duties, including the weighing of evidence, the construction of statutes, and the application of general principles of law in connection therewith, is exclusive. V Ibid., 410.

All accounts for the expenditure of public moneys should be itemized so far as practicable, and a discretion given to the officer having control of an appropriation does not dispense with this requirement. IV Ibid., 159.

[2] For regulations respecting the administrative examination of money accounts in the War Department, see paragraphs 737, 738, Army Regulations of 1901.

expenditures required by law to be published annually shall be prepared and published for the fiscal year, as thus established. The fiscal year for the adjustment of the accounts of Secretary of the Senate for compensation and traveling expenses of Senators, and of the Sergeant-at-Arms of the House of Representatives for compensation and mileage of Members and Delegates, shall extend to and include the third day of July. *Sec. 9, act of October 1, 1890 (26 Stat. L., 646).*

RENDITION OF ACCOUNTS.

Par.
636. Monthly accounts required.
637. Distinct accounts under separate heads of appropriation.
Par.
638–640. Transmission of accounts; rules; delays.
641. Report of delinquents.

Accounts.
July 17, 1862, c. 199, s. 1, v. 12, p. 593: Mar. 2, 1867, res. 48, v. 14, p. 571; July 15, 1870, c. 295, s. 15, v. 16, p. 334; Feb. 27, 1877, c. 69, v. 19, p. 249; July 31, 1894, v. 28, p. 206.
Sec. 3622, R.S.

636. Every officer or agent of the United States who receives public money which he is not authorized to retain as salary, pay, or emolument shall render his accounts monthly.[1] Such accounts, with the vouchers necessary to the correct and prompt settlement thereof, shall be sent by mail, or otherwise, to the bureau to which they pertain within ten days after the expiration of each successive month, and, after examination there, shall be passed to the proper accounting officer of the Treasury for settlement.[2]

* * * * *

In case of the nonreceipt at the Treasury or proper bureau of any accounts within a reasonable and proper time thereafter, the officer whose accounts are in default shall be required to furnish satisfactory evidence of having complied with the provisions of this section. Nothing herein contained shall, however, be construed to restrain the heads of any of the Departments from requiring such other returns or reports from the officer or agent, subject to the control of such heads of Departments, as the public interest may require.

---

[1] The forms for the rendition of accounts are prescribed by the Comptroller of the Treasury. See, also, section 4 of the act of August 30, 1890 (26 Stat. L., 413), which required such accounts to be rendered quarterly. The requirement of section 4, act of August 30, 1890 (26 Stat. L., 413), that accounts opened thereafter be rendered quarterly, was repealed by section 6 of the act of July 31, 1894 (28 Stat. L., 206).

[2] An account is something which may be adjusted and liquidated by an arithmetical computation. One set of Treasury officers examine and audit the accounts; another set is intrusted with the power of reviewing that examination and with the further power of determining whether the laws authorize the payment of the account when liquidated. But no law authorizes Treasury officials to allow and pass in accounts a number not the result of arithmetical computation upon a subject within the operation of the mutual part of a contract. Power *v.* U. S., 18 Ct. Cls., 263, 275. A voucher given by an officer of the Government, in the regular and ordinary course of his business, for services rendered or articles purchased for the public service, within the scope of his authority and the line of his duty unimpeached, is prima facie evidence of indebtedness on the part of the United States, as therein stated. Parish *v.* U. S., 2 Ct. Cls., 341; Solomon *v.* U. S., 19 Wall., 17, and 9 Ct. Cls., 54. In this respect the executive officers who are authorized to make contracts, employ services, or purchase property for the public service, and whose duty it is to see to it that the money certified by them to be due has been actually and fairly earned, within their own knowledge, while acting in their official capacity, differ from the certified balances of the accounting officers.

Distinct accounts required under separate heads of appropriation.
Mar. 3, 1809, c. 28, s. 1, v. 2, p. 535.
Sec. 3623, R. S.

637. All officers, agents, or other persons receiving public moneys shall render distinct accounts of the application thereof, according to the appropriation under which the same may have been advanced to them.

Transmission of monthly, etc., accounts.
Sec. 12, July 31, 1894, v. 28, p. 209.
Mar. 2, 1901, v. 31, p. 910.

Auditor may disapprove requisitions on delinquency, etc.

638. All monthly accounts shall be mailed or otherwise sent to the proper officer at Washington within ten days after the end of the month to which they relate, and quarterly and other accounts within twenty days after the period to which they relate, and shall be transmitted to and received by the Auditors within sixty days of their actual receipt at the proper office in Washington in the case of monthly, and sixty days in the case of quarterly and other accounts. Should there be any delinquency in this regard at the time of the receipt by the Auditor of a requisition for an advance of money, he shall disapprove the requisition, which he may also do for other reasons arising out of the condition of the officer's accounts for whom the advance is requested; but the Secretary of the Treasury may overrule the Auditor's decision as to the sufficiency of these latter reasons. *Sec. 12, act of July 31, 1894 (28 Stat. L., 209); act of March 2, 1901 (31 ibid., 910).*

In the examination of claims in the Treasury Department these accounting officers act wholly upon the evidence presented to them by others, and have themselves no personal knowedge of the facts upon which the claims are founded. It is one of the fundamental principles upon which that Department is established—and a useful and nice one it is—that the executive officers who pass upon public accounts shall be different from those who are authorized to make contracts and incur liabilities in the expenditure of public money. McCann *v.* U. S., 18 Ct. Cls. 445, 447. The accounts under a contract remain open so long as anything remains to be adjusted or paid. Parker *v.* U. S., 26 Ct. Cls. 344.

The first clause of section 3622 of the Revised Statutes, which requires the rendition of accounts monthly, is applicable to every officer who receives advances of public money to be disbursed, and also to every officer who collects and receives fees and revenues which it is his duty to account for. XIX Opin. Att. Gen., 557.

The requirement that officers render their accounts monthly is not subject to the direction of the Secretary of the Treasury, excepting in extraordinary cases, where he shall be of opinion that the statutory period ought to be enlarged to meet the special circumstances of such cases. XIX Opin. Att. Gen., 557.

For other statutory regulations in respect to the disbursement of and accounting for the public moneys, see sections 3643, 3648, 3678, and 3679 of the Revised Statutes, paragraphs 617, 619, 620, and 621 *ante;* see, also, the acts of July 5, 1884 (23 Stat. L., 113), and May 28, 1896 (29 ibid., 148), paragraphs 622, and 623 *ante.* For a definition of the term "account" as used in connection with the receipt and disbursement of the public money, see note 3, supra.

Secretary of the Treasury to prescribe rules for rendition of accounts.

639. The Secretary of the Treasury shall prescribe suitable rules and regulations, and may make orders in particular cases relaxing the requirement of mailing or otherwise sending accounts as aforesaid within ten or twenty days, or waiving delinquency, in such cases only in which there is, or is likely to be, a manifest physical difficulty in complying with the same, it being the purpose of this provision to require the prompt rendition of accounts without regard to the mere convenience of the officers, and to forbid the advance of money to those delinquent in rendering them. *Ibid.*

Delays in submitting accounts.

640. Should there be a delay by the administrative Departments beyond the aforesaid twenty or sixty days in transmitting accounts, an order of the President [or, in the event of the absence from the seat of government or sickness of the President, an order of the Secretary of the Treasury] in the particular case shall be necessary to authorize the advance of money requested: *And provided further*, That this section shall not apply to accounts of the postal revenue and expenditures therefrom, which shall be rendered as now required by law.[1] *Ibid.*

---

[1] Amended by the insertion of the clause in brackets by section 4 of the act of March 2, 1895 (28 Stat. L., 807).

Under the authority vested in him by this statute, the Secretary of the Treasury relaxed the requirements in respect to the mailing of accounts by extending the time of mailing the accounts of disbursing officers as set forth therein.

Such period of relaxation was still further extended to December 31, 1900 (see General Orders, No. 211, A. G. O., of December 29, 1899, and the orders therein cited). Under this permission the date of mailing as fixed by A. R. 709, has been temporarily changed to the 20th day of each month for all accounts, whether rendered in this country or in the island possessions.

The exigency which required this temporary change having now ceased in the Subsistence Department at all depots, posts, and stations in the United States, except at the purchasing depots at New York, Chicago, and San Francisco, the relaxation of the law as to time of rendition of accounts is hereby withdrawn to take effect May 1, 1900, from all but the excepted depots, and accounts will thereafter be mailed on or before the 10th day of the month as required by A. R. 627. At the excepted depots the mailing of accounts may continue to be delayed until the 20th day of the month until further orders, or until December 31, 1900.

In the island possessions of Cuba, Porto Rico, and Hawaii the relaxation is hereby withdrawn as of date May 1, 1900, from all officers in those islands engaged in the receipt or disbursement of subsistence funds, and their accounts will thereafter be mailed on or before the 10th day of the month, as required by A. R. 709.

The mailing of the accounts of officers receiving and disbursing subsistence funds in the Philippines may continue to be delayed until the 20th day of the month until further orders, or until December 31, 1900.

Officers receiving and disbursing subsistence funds on United States transports will, after May 1, 1900, mail their accounts and returns at the port at which they may be when the ten days' limit will expire, or, if they should be at sea when the ten days' limit expires, they will mail their accounts and returns at the next United States or island port at which a stop is made.

Returns of subsistence stores and subsistence property will be rendered and mailed at all places concurrently with the rendering and mailing of accounts current and vouchers.

An officer delinquent in mailing his subsistence account current and vouchers or his returns within the time hereinabove limited will transmit with them at the time

REPORT OF DELINQUENTS.

Secretary of Treasury to report delinquent officers.
Sec. 4, May 28, 1896, v. 29, p. 179.

641. The Secretary of the Treasury shall, on the first Monday of January in each year, make report to Congress of such officers and administrative departments and offices of the Government as were, respectively, at any time during the last preceding fiscal year delinquent in rendering or transmitting accounts to the proper offices in Washington and the cause therefor, and in each case indicating whether the delinquency was waived, together with such officers, including postmasters and officers of the Post-Office Department, as were found upon final settlement of their accounts to have been indebted to the Government, with the amount of such indebtedness in each case, and who, at the date of making report, had failed to pay the same into the Treasury of the United States.[1] *Sec. 4, act of May 28, 1896 (29 Stat. L., 179).*

REVISION OF ACCOUNTS.

Balances, conclusive character. Revision by Comptroller.
July 31, 1894, s. 8, v. 28, p. 207.

642. The balances which may from time to time be certified by the Auditors to the division of bookkeeping and warrants, or to the Postmaster-General, upon the settlement of public accounts, shall be final and conclusive upon the executive branch of the Government, except that any person whose accounts have been settled, the head of an Executive Department to which the account pertains, or the Comptroller of the Treasury, may, within a year, obtain a revision of the said account by the Comptroller of the Treasury, whose decision upon such revision shall be final and conclusive upon the executive branch of the Government: *Provided*, That the Secretary of the Treasury may, when in his judgment the interests of the Government require it, suspend payment and direct the reexamination of any account.[2] *Sec. 8, act of July 31, 1894 (28 Stat. L., 207).*

---

of mailing a full explanation of the causes of delay for the action of the proper authorities. G. O. 42, A. G. O., 1900.

The time for examination of monthly accounts by the bureaus and offices of the War Department after the date of actual receipt and before transmitting the same to the Auditor for the War Department was extended from twenty to sixty days for the period of one year from December 20, 1899, by the act of December 20, 1899 (31 Stat. L., 1.)

[1] This provision replaces the requirement of section 12 of the act of July 31, 1894 (28 Stat. L., 209), that "the Secretary of the Treasury shall, on the first Monday in January in each year, make report to Congress of such officers as are then delinquent in the rendering of their accounts, or in the payment of balances found due from them for the last preceding fiscal year."

[2] (1) The Auditor, in the first instance, has the original and exclusive jurisdiction to receive, examine, and settle all accounts.

(2) The Comptroller is without jurisdiction to entertain any claim not previously

SUITS FOR RECOVERY OF MONEY.

Suits to recover money.
Mar. 3, 1797, c. 20, s. 1, v. 1, p. 512.
Sec. 3624, R. S.

643. Whenever any person accountable for public money neglects or refuses to pay into the Treasury the sum or balance reported to be due to the United States upon the adjustment of his account, the Comptroller of the Treasury shall institute suit for the recovery of the same, adding to the sum stated to be due on such account the commissions of the delinquent, which shall be forfeited in every instance where suit is commenced and judgment obtained thereon, and an interest of six per centum per annum from the time of receiving the money until it shall be repaid into the Treasury.[1]

---

passed upon and settled by the Auditor, and, until the Auditor has settled the account, the Comptroller is without jurisdiction to revise it.

(3) The settlement of an account by the Auditor, so far as the claimant's right or power before the accounting officers is concerned, is final and conclusive, except that any person whose account may have been settled by the Auditor may, within a year, obtain a revision of said account by the Comptroller.

(4) The person who may obtain such revision is the person whose account has been settled by the Auditor. V Compt. Dec., 333, 334.

The Comptroller has the exclusive right to reopen an account which has been revised by himself or his predecessors. IV Compt. Dec., 303. After the expiration of a year from the date of settlement an Auditor has the exclusive right to reopen an account settled by himself or his predecessors. Ibid. Before the expiration of a year the right of revision by the Comptroller is exclusive, and an Auditor can not reopen an account within that period. Ibid. After the expiration of six months from the date of settlement by the Second Auditor, under the act of July 1,1892 (27 Stat. L., 194), no appeal having been taken within that period, the Auditor for the War Department has the exclusive right to reopen the settlement. Ibid, 471.

Section 8 of the act of July 31, 1894, specifies the officers and persons by whom the revision of accounts by the Comptroller may be obtained, and it must be construed to be exclusive. IV Compt. Dec., 723. Under section 8 of the act of July 31, 1894, the Comptroller of the Treasury is authorized to revise, upon his own motion, all items embraced in an account, including items upon which payment has been accepted; and in particular instances, where justice requires it, such authority may be exercised in favor of a claimant. Ibid, 22.

The accounting officers are not authorized to reopen accounts which have been settled, except for the purpose of correcting mistakes of fact arising from errors of calculation, or upon the production of newly discovered material evidence. VI Compt. Dec., 236. The accounting officers are not authorized to reopen accounts for the purpose of correcting decisions upon questions of law subsequently held to be erroneous. Ibid, 91.

The right of the accounting officers to reopen accounts which have been settled, either by themselves or their predecessors, for the purpose of correcting mistakes of fact arising from errors of calculation, or upon the production of newly discovered material evidence, or for fraud or collusion, has received the sanction of the courts and of the law-making power. The act of July 31, 1894, does not take away or modify that right. IV Compt. Dec., 303.

Where the Comptroller has made a final settlement of a claim from the War Department, an order of the Secretary that the accounts be reexamined has no validity. B. & O. R. R. Co. *v.* U. S. 31, Ct. Cls., 484.

[1] For other statutory provisions respecting the recovery of debts or balances due the United States, see the titles "The Comptroller of the Treasury" and "The Auditors of the Treasury" in the chapter entitled THE TREASURY DEPARTMENT, and the title "Distress Warrants" in the chapter entitled THE PUBLIC MONEY. See also U. S. *v.* Gaussen, 19 Wall., 198.

MISCELLANEOUS OFFENSES IN CONNECTION WITH THE SAFE-KEEPING AND DISBURSEMENT OF THE PUBLIC MONEY.

Par.
644. Short payments.
645. Unlawful depositing, loaning, conversion, etc.
646. Failure to safely keep public money.
647. The same.
648. Failure to render accounts.
649. Failure to deposit as required.
650. The same; penalty.
651. Record evidence of embezzlement.
652. Refusal to pay draft.
653. Evidence of conversion.
654. Unlawfully receiving money by banker, etc.

Par.
655. The same; penalty.
656. Officers not to be interested in claims; penalty.
657. Accepting bribe; penalty.
658. The same; penalty.
659. Contracting beyond appropriation; penalty.
660. Embezzlement, larceny, etc.; penalty.
661. Receiving embezzled money or property; penalty.

644. Every officer charged with the payment of any of the appropriations made by any act of Congress who pays to any clerk, or other employee of the United States, a sum less than that provided by law, and requires such employee to receipt or give a voucher for an amount greater than that actually paid to and received by him, is guilty of embezzlement, and shall be fined in double the amount so withheld from any employee of the Government, and shall be imprisoned at hard labor for the term of two years.

Penalty for receipting for larger sums than are paid.
Mar. 3, 1853, c. 104, s. 4, v. 10, p. 239.
Sec. 5483, R.S.

EMBEZZLEMENT.

645. Every disbursing officer of the United States who deposits any public money intrusted to him in any place or in any manner except as authorized by law, or converts to his own use in any way whatever, or loans with or without interest, or for any purpose not prescribed by law withdraws from the Treasurer or any assistant treasurer or any authorized depository, or for any purpose not prescribed by law transfers or applies any portion of the public money intrusted to him, is, in every such act, deemed guilty of an embezzlement of the money so deposited, converted, loaned, withdrawn, transferred, or applied, and shall be punished by imprisonment with hard labor for a term not less than one year nor more than ten years, or by a fine of not more than the amount embezzled or less than one thousand dollars, or by both such fine and imprisonment. (*See secs. 3620, 5497, R. S.*)

Disbursing officer unlawfully depositing, converting, loaning, or transferring public money.
June 14, 1866, c. 122, s. 2, v. 14, p. 64.
Sec. 5488, R.S.

646. If the Treasurer of the United States, or any assistant treasurer, or any public depositary, fails safely to keep all moneys deposited by any disbursing officer or disbursing agent, as well as all moneys deposited by any receiver,

Failure of Treasurer, etc., to safely keep public moneys.
Mar. 3, 1857, c. 114, s. 2, v. 11, p. 249.
Sec. 5489, R.S.

collector, or other person having moneys of the United States, he shall be deemed guilty of embezzlement of the moneys not so safely kept, and shall be imprisoned not less than six months nor more than ten years, and fined in a sum equal to the amount of money so embezzled. (*See sec. 3639, R. S.*)

Custodians of public money failing to safely keep, without loaning, etc.
Aug. 6, 1846, c. 90, s. 16, v. 9, p. 63.
Sec. 5490, R.S.

647. Every officer or other person charged by any act of Congress with the safe-keeping of the public moneys, who fails to safely keep the same, without loaning, using, converting to his own use, depositing in banks, or exchanging for other funds than as specially allowed by law, shall be guilty of embezzlement of the money so loaned, used, converted, deposited, or exchanged, and shall be imprisoned not less than six months nor more than ten years, and fined in a sum equal to the amount of money so embezzled.[1] (*See sec. 3639, R. S.*)

Failure of officer to render accounts, etc.
July 17, 1862, c. 199, s. 1, v. 12, p. 593; Mar. 2, 1867, Res. 48, v. 14, p. 571; July 15, 1870, c. 295, s. 15, v. 16, p. 334; Aug. 6, 1846, c. 90, s. 16, v. 9, p. 63.
Sec. 5491, R.S.

648. Every officer or agent of the United States who, having received public money which he is not authorized to retain as salary, pay, or emolument, fails to render his accounts for the same as provided by law, shall be deemed guilty of embezzlement, and shall be fined in a sum equal to the amount of the money embezzled, and shall be imprisoned not less than six months or more than ten years.[2] (*See secs. 3622, 3633, R. S.*)

Failure to deposit as required.
Mar. 3, 1857, c. 114, s. 3, v. 11, p. 249; Aug. 6, 1846, c. 90, s. 16, v. 9, p. 63.
Sec. 5492, R.S.

649. Every person who, having moneys of the United States in his hands or possession, fails to make deposit of the same with the Treasurer, or some assistant treasurer, or some public depositary of the United States, when required so to do by the Secretary of the Treasury or the head of any other proper Department, or by the accounting officers of the Treasury, shall be deemed guilty of embezzlement thereof, and shall be imprisoned not less than six months nor more than ten years, and fined in a sum equal to the amount of money embezzled.

---

[1] It is a defense to a charge (under the 62d article) of the embezzlement defined in section 5490 of the Revised Statutes as consisting in a failure to safely keep public moneys by an officer charged with the safe-keeping of the same that the funds alleged to have been embezzled were, without fault on the part of the accused, lost in transportation or fraudulently or feloniously abstracted. Dig. Opin. J. A. G., par. 155.

[2] In view of the injunction and definition of sections 3622 and 5491 of the Revised Statutes, an officer who, in his official capacity, receives public money (not pay or allowances) which he fails duly to account for to the United States is guilty of embezzlement. The statute makes no distinction as to the sources from which the money is derived or the circumstances of its receipt. Nor is it material whether or not the officer actually converted it to his own use or what was the motive of his disposition of it. So, *held*, that an officer who, having claimed and exacted certain moneys from Government contractors for alleged liabilities on their part, failed to pay the same into the Treasury or to duly account therefor, was guilty of embezzlement under the ninth paragraph of article 60. Dig. Opin. J. A. G.. par. 156.

650. The provisions of the five preceding sections shall be construed to apply to all persons charged with the safe-keeping, transfer, or disbursement of the public money, whether such persons be indicted as receivers or depositaries of the same. (*See secs. 3615–3652e, R. S.*)

Provisions of the five preceding sections construed.
Aug. 6, 1846, c. 90, s. 16, v. 9, p. 63.
Sec. 5493, R. S.

651. Upon the trial of any indictment against any person for embezzling public money under the provisions of the six preceding sections, it shall be sufficient evidence, for the purpose of showing a balance against such person, to produce a transcript from the books and proceedings of the Treasury, as required in civil cases, under the provisions for the settlement of accounts between the United States and receivers of public money.[1] (*See secs. 3625, 3633, R. S.*)

Record evidence of embezzlement
Aug. 6, 1846, c. 90, s. 16, v. 9, p. 63.
Sec. 5494, R. S.

652. The refusal of any person, whether in or out of office, charged with the safe-keeping, transfer, or disbursement of the public money, to pay any draft, order, or warrant drawn upon him by the proper accounting officer of the Treasury, for any public money in his hands belonging to the United States, no matter in what capacity the same may have been received or may be held, or to transfer or disburse any such money promptly, upon the legal requirement of any authorized officer, shall be deemed, upon the trial of any indictment against such person for embezzlement, as prima facie evidence of such embezzlement.[2] (*See sec. 3644, R. S.*)

Refusal to pay draft prima facie evidence of embezzlement.
Ibid.
Sec. 5495, R. S.

653. If any officer charged with the disbursement of the public moneys accepts, receives, or transmits to the Treasury Department, to be allowed in his favor, any receipt or voucher from a creditor of the United States, without having paid to such creditor in such funds as the officer received for disbursement, or in such funds as he may be authorized to take in exchange, the full amount specified in such receipt or voucher, every such act is an act of conversion by such officer to his own use of the amount specified in such receipt or voucher. (*See sec. 3652, R. S.*)

Evidence of conversion.
Ibid.
Sec. 5496, R. S.

---

[1] U. S. *v.* Gaussen, 19 Wallace, 198.

[2] Section 5495 of the Revised Statutes provides that the refusal of any person charged with the disbursement of public moneys promptly to transfer or disburse the funds in his hands, "upon the legal requirement of an authorized officer, shall be deemed, upon the trial of any indictment against such person for embezzlement, as *prima facie* evidence of such embezzlement." Applying this rule to a military case, it is clear that in the event of such a refusal by a disbursing officer of the Army the burden of proof would be upon him to show that his proceeding was justified and that it would not be for the prosecution to show what had become of the funds. So, where an acting commissary of subsistence, on being relieved, failed to turn over the public moneys to his successor, or to his post commander, when ordered to do so, or to produce such moneys, exhibit vouchers for the same, or otherwise account for their use, when required to do so by the department commander, *held*, that he was properly chargeable with and convicted of embezzlement under this article (sixtieth article of war). Dig. Opin. J. A. G., par. 114.

Unlawfully receiving money by bankers, etc., to be embezzlement.
June 14, 1866, c. 122, s. 3, v. 14, p. 65.
Sec. 5497, R.S.

654. Every banker, broker, or other person not an authorized depositary of public moneys, who knowingly receives from any disbursing officer, or collector of internal revenue, or other agent of the United States, any public money on deposit, or by way of loan or accommodation, with or without interest, or otherwise than in payment of a debt against the United States, or who uses, transfers, converts, appropriates, or applies any portion of the public money for any purpose not prescribed by law, and every president, cashier, teller, director, or other officer of any bank or banking association, who violates any of the provisions of this section, is guilty of an act of embezzlement of the public money so deposited, loaned, transferred, used, converted, appropriated, or applied, and shall be punished as prescribed in section fifty-four hundred and eighty-eight.

The same.
Sec. 5497, R.S.

655. And any officer connected with, or employed in, the internal-revenue service of the United States, and any assistant of such officer, who shall embezzle or wrongfully convert to his own use any money or other property of the United States, and any officer of the United States, or any assistant of such officer, who shall embezzle or wrongfully convert to his own use any money or property which may have come into his possession or under his control in the execution of such office or employment, or under color or claim of authority as such officer or assistant, whether the same shall be the money or property of the United States or of some other person or party, shall, where the offense is not otherwise punishable by some statute of the United States, be punished by a fine equal to the value of the money and property thus embezzled or converted, or by imprisonment not less than three months nor more than ten years, or by both such fine and imprisonment. *Act of February 3, 1879 (20 Stat. L., 280).*

Officers, etc., interested in claims.
Feb. 26, 1853, c. 81, s. 2, v. 10, p. 170.
Sec. 5498, R.S.

656. Every officer of the United States, or person holding any place of trust or profit, or discharging any official function under or in connection with any Executive Department of the Government of the United States, or under the Senate or House of Representatives of the United States, who acts as an agent or attorney for prosecuting any claim against the United States, or in any manner or by any means, otherwise than in discharge of his proper official duties, aids or assists in the prosecution or support of any such claim, or receives any gratuity, or any share of or interest in any claim from any claimant against the United States, with intent to aid or assist, or in consideration of having aided or assisted, in the prosecution of such claim, shall pay a fine of not more than five thousand dollars, or suffer imprisonment not more than one year, or both.

657. Every officer of the United States, and every person acting for or on behalf of the United States, in any official capacity under or by virtue of the authority of any department or office of the Government thereof; and every officer or person acting for or on behalf of either House of Congress, or of any committee of either House, or of both Houses thereof, who asks, accepts, or receives any money, or any contract, promise, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, with intent to have his decision or action on any question, matter, cause, or proceeding which may at any time be pending, or which may be by law brought before him in his official capacity, or in his place of trust or profit, influenced thereby, shall be punished as prescribed in the preceding section.

United States officer accepting bribe, etc.
Ibid.
July 13, 1866, c. 184, s. 62, v. 14, p. 168; Mar. 3, 1863, c. 76, s. 6, v. 12, p. 740; July 18, 1866, c. 201, s. 35, v. 14, p. 186.
Sec. 5501, R.S.

658. Every member, officer, or person convicted under the provisions of the two preceding sections, who holds any place of profit or trust, shall forfeit his office or place; and shall thereafter be forever disqualified from holding any office of honor, trust, or profit under the United States.[1]

Forfeiture of office.
Feb. 26, 1853, c. 81, s. 6, v. 10, p. 171.
Sec. 5502, R.S.

659. Every officer of the Government who knowingly contracts for the erection, repair, or furnishing of any public building, or for any public improvement, to pay a larger amount than the specific sum appropriated for such purpose, shall be punished by imprisonment not less than six months nor more than two years, and shall pay a fine of two thousand dollars.

Officer contracting beyond specific appropriation.
July 25, 1868, c. 233, s. 3, v. 15, p. 177.
Sec. 5503, R.S.

660. Any person who shall embezzle, steal, or purloin any money, property, record, voucher, or valuable thing whatever of the moneys, goods, chattels, records, or property of the United States shall be deemed guilty of felony, and on conviction thereof before the district or circuit court of the United States in the district wherein said offense may have been committed, or into which he shall carry or have in possession of said property so embezzled, stolen, or purloined, shall be punished therefor by imprisonment at hard labor in the penitentiary not exceeding five years, or by a fine not exceeding five thousand dollars,

Embezzlement, larceny, etc.
Mar. 3, 1875, v. 18, p. 479.

---

[1] Section 5500, above referred to, but here omitted, relates to the offense of bribery when committed by a judge of a court of the United States.

or both, at the discretion of the court before which he shall have been convicted. *Act of March 3, 1875 (18 Stat. L., 479).*

Receiving, concealing, property, etc. Sec. 2, *ibid.*

661. If any person shall receive, conceal, or aid in concealing, or have, or retain in his possession with intent to convert to his own use or gain, any money, property, record, voucher, or valuable thing whatever of the moneys, goods, chattels, records, or property of the United States which has theretofore been embezzled, stolen, or purloined from the United States by any other person, knowing the same to have been so embezzled, stolen, or purloined, such person shall, on conviction before the circuit or district court of the United States in the district wherein he may have such property, be punished by a fine not exceeding five thousand dollars, or imprisonment at hard labor in the penitentiary not exceeding five years, one or both, at the discretion of the court before which he shall have been convicted; and such receiver may be tried either before or after the conviction of the principal felon; but if the party has been convicted, then the judgment against him shall be conclusive evidence in the prosecution against such receiver that the property of the United States therein described has been embezzled, stolen, or purloined. *Sec. 2, ibid.*

CHAPTER XV.

THE ADJUTANT-GENERAL'S DEPARTMENT.[1]

Par.
662. Organization.
663. Rank of adjutant-general.
664–666. Promotions and details.
Par.
667. Adjutants-General to act as Inspectors-General.
668. Returns of troops.
669–679. The recruiting service.

Composition.
Feb. 2, 1901, s. 13, v. 31, p. 751.
Sec. 1128, R.S.

662. The Adjutant-General's Department shall consist of one adjutant-general with the rank of major-general during the active service of the present incumbent of the office, and with the rank of brigadier-general thereafter; five assistant adjutants-general with the rank of colonel, seven assistant adjutants-general with the rank of lieutenant-colonel, and fifteen assistant adjutants-general with the rank of major: *Provided*, That all vacancies created or caused by this section shall, as far as possible, be filled by promotion according to seniority of officers of the Adjutant-General's Department. *Sec. 13, act of February 2, 1901 (31 Stat. L., 751).*

Rank of Adjutant-General.
June 6, 1900, s. 3, v. 31, p. 655.

663. The Adjutant-General of the Army shall have the rank, pay, and allowances of a major-general in the Army of the United States, and on his retirement shall have the retired pay of that rank. *Sec. 3, act of June 6, 1900 (31 Stat. L., 655).*

PROMOTIONS AND DETAILS.

Promotions.
Feb. 2, 1901, s. 26, v. 31, p. 755.

664. So long as there remain any officers holding permanent appointments in the Adjutant-General's * * * Department, * * * they shall be promoted according to seniority in the several grades, as now provided by law, and nothing herein contained shall be deemed to apply to vacancies which can be filled by such promotions, or to the periods for which the officers so promoted shall hold their appointments.[2] *Sec. 26, act of 1901 (31 Stat. L., 755).*

Details.
Ibid.

665. When any vacancy, except that of the chief of the department or corps, shall occur, which can not be filled by promotion as provided in this section, it shall be filled by detail from the line of the Army, and no more permanent appointments shall be made in those departments or corps.[1] *Ibid.*

---

[1] For historical note see end of chapter.

[2] See also section 13, act of February 2, 1901, paragraph 662, *ante*.

The same.
Ibid.

666. Such details shall be made from the grade in which the vacancies exist, under such system of examination as the President may from time to time prescribe. *Ibid.*

DUTIES.

To act as assistant inspectors-general.

667. Assistant adjutants-general shall, in addition to their own duties, perform those of assistant inspectors-general, when the convenience of the service requires them to do so.[2]

July 5, 1838, c. 162, s. 7, v. 5, p. 257; June 18, 1846, c. 29, s. 6, v. 9, p. 18; Mar. 3, 1847, c. 61, s. 2, v. 9, p. 184; July 19, 1848, c. 104, s. 3, v. 9, p. 247; Mar. 2, 1849, c. 83, s. 4, v. 9, p. 351. **Sec. 1130, R. S.**

RETURNS OF TROOPS.

Monthly returns.
7 Art. War.

668. Every officer commanding a regiment, an independent troop, battery, or company, or a garrison, shall, in the beginning of every month, transmit through the proper channels to the Department of War an exact return of the same, specifying the names of the officers then absent

---

[1] For statutory regulations respecting details to the staff see the title "Details to the Staff" in the chapter entitled "THE STAFF DEPARTMENTS."

[2] The Adjutant-General's Department is the bureau of orders and records of the Army.

Orders and instructions emanating from the War Department or Army Headquarters and all general regulations are communicated to troops and individuals in the military service through the Adjutant-General. His office is the repository for the records of the War Department which relate to the personnel of the permanent military establishment and militia in the service of the United States, to the military history of every commissioned officer and soldier thereof, and to the movements and operation of troops.

The records of all appointments, promotions, resignations, deaths, and other casualties in the Army, the preparation and distribution of commissions, and the compilation and issue of the Army Register and of information concerning examinations for appointment and promotion, pertain to the Adjutant-General's Office.

The Adjutant-General is charged, under the direction of the Secretary of War, with the management of the recruiting service, the collection and classification of military information in regard to our own and foreign countries, the preparation of instructions to officers detailed to visit encampments of militia, and the digesting, arranging, and preserving of their reports; also the preparation of the annual returns of the militia required by law to be submitted to Congress. Requests for military information, which require action on the part of any military attaché of the United States, will be made to the Adjutant-General of the Army. Par. 833, A. R., 1901.

In the Adjutant-General's Office the names of all enlisted soldiers are enrolled, enlistments and descriptive lists filed, deaths, discharges, desertions, etc., recorded, the general returns of the Army consolidated, returns of regiments and posts and all muster rolls, and the inventories of effects of deceased officers and soldiers preserved. Par. 834, ibid. But, see, as to the custodianship of certain rolls, returns, and records of the volunteer forces called into service during the recent war with Spain, section 8 of the act of April 22, 1898 (30 Stat. L., 362), paragraph 1238, post.

The act of appropriation of March 15, 1898, contained the following requirement: "For contingent expenses of the Military Information Division of the Adjutant-General's Office, and of the military attachés at the United States embassies and legations abroad, to be expended under the direction of the Secretary of War, three thousand six hundred and forty dollars. Act of March 15, 1898 (30 Stat. L., 327). For pay of a clerk attendant on the collection and classification of military information, one thousand five hundred dollars." Ibid., 320. Similar provision is made in in the act of March 3, 1899. Ibid., 1064.

from their posts, with the reasons for and the time of their absence. And any officer who, through neglect or design, omits to send such returns shall, on conviction thereof, be punished as a court-martial may direct.[1] *Seventh article of war.*

THE RECRUITING SERVICE.

Par.
669. Term of enlistment.
670–671. General qualifications.
672–673. Enlistment of minors.
674. Unlawful enlistments, penalty.
675. Fraudulent enlistment.
676. Oath of enlistment.

Par.
677. Bounty.
678. Enlistments in excess of authorized strength.
679. Details for recruiting service; increased rank.

Term of enlistment.
March 3, 1869, s. 4 v. 15, p. 318.
Aug. 1, 1894, s. 2, v. 28, p. 216.
Sec. 1119. R. S.

669. Hereafter all enlistments in the Army shall be for the term of three years,[2] and no soldier shall be again enlisted in the Army whose service during his last preceding term of enlistment has not been honest and faithful. *Section 2, act of August 1, 1894 (28 Stat L., 216).*

General qualifications.

670. Recruits enlisting in the Army must be effective and able-bodied men, and between the ages of eighteen and thirty-five years,[3] at the time of their enlistment. This limitation as to age shall not apply to soldiers reenlisting.

Mar. 16, 1802, c. 9, s. 11, v. 2, p. 134; Mar. 3, 1815, c. 79, s. 7, v. 3, p. 224; July 5, 1838, c. 162, s. 30, v. 5, p. 260, Feb. 13, 1862, c. 25, s. 2, v. 12, p. 339: June 21, 1862, res. 37, v. 12, p. 620; July 17, 1862, c. 200, s. 21, v. 12, p. 597; Feb. 27, 1893, v. 27, p. 486, s. 2; Aug. 1, 1894, v. 28, p. 216, s. 4; Mar. 2, 1899, v. 30, p. 977; *In re* McDonald, 1 Lowell, p. 100. **Sec. 1116, R. S.**

Qualifications for enlistment.
Aug. 1, 1894, s. 2, v, 28, p. 216; Mar. 2, 1899, s. 4, v. 30, p. 977.

671. In time of peace no person (except an Indian) who is not a citizen of the United States, or who has not made legal declaration of his intention to become a citizen of the United States, or who can not speak, read, and write the English language, or who is over thirty-five years of age,[3] shall be enlisted for the first enlistment in the Army. *Sec. 2, act of August 1, 1894 (28 Stat. L., 216); sec. 4, act of March 2, 1899 (30 Stat. L., 977).*

---

[1] Commanders of departments, corps, and posts will make to the Adjutant-General's Office, in Washington, monthly returns of their respective commands on forms furnished by the Adjutant-General of the Army, and in accordance with the directions printed thereon. In like manner company commanders will make monthly returns of their companies to regimental headquarters. Par. 876, A. R., 1901.

For instructions relating to the preparation of monthly returns see paragraphs 876–889, Army Regulations, 1901.

[2] This enactment replaces the requirement of section 1119 of the Revised Statutes by which the term of enlistment was fixed at five years. For regulations governing enlistments in the regular service see Article LXXI, paragraphs 818 to 856, Army Regulations of 1895. For rules governing the recruitment of the volunteer forces see Circular of June 3, 1898, from the Adjutant-General's Office, and General Orders, 122 and 150, A. G. O., of 1899.

[3] The act of February 27, 1893 (27 Stat. L., 486), fixed the superior limit of age at enlistment at thirty years instead of thirty-five, as required by section 1116, Revised Statutes, and this requirement was repeated in section 2 of the act of August 1, 1894 (28 ibid., 216), which limited the operation of the enactment to a "time of peace," leaving the higher limit of age to become operative in time of war. The superior limit was established at thirty-five years and the inferior limit at eighteen years by section 4 of the act of March 3, 1899 (ibid., 977).

Enlistment of minors.
May 15, 1872, c. 162, s. 1, v. 17, p. 117.
Shorner's Case, 1 Car. L. Rep., 55.
Sec. 1117, R.S.

672. No person under the age of twenty-one years shall be enlisted or mustered into the military service of the United States without the written consent of his parents or guardians: *Provided*, That such minor has such parents or guardians entitled to his custody and control.

Persons not to be enlisted.
Mar. 2, 1833, c. 68, s. 6, v. 4, p. 647; July 4, 1864, c. 237, s. 5, v. 13, p. 380; Mar. 3, 1865, c. 79, s. 18, v. 13, p. 490; Feb. 27, 1877, c. 69, v. 19, p. 242.
Sec. 1118, R.S.

673. No minor under the age of sixteen years, no insane or intoxicated person, no deserter from the military service of the United States, and no person who has been convicted of a felony shall be enlisted or mustered into the military service.

Prohibited enlistments; penalty.
3 Art. War.

674. Every officer who knowingly enlists or musters into the military service any minor over the age of sixteen years without the written consent of his parents or guardians, or any minor under the age of sixteen years, or any insane or intoxicated persons, or any deserter from the military or naval service of the United States, or any person who has been convicted of any infamous criminal offense, shall, upon conviction, be dismissed from the service, or suffer such other punishment as a court-martial may direct. *Third Article of War.*

Fraudulent enlistment.
July 27, 1892, s. 2, v. 27, p. 277.

675. Fraudulent enlistment and the receipt of any pay or allowance thereunder, is hereby declared a military offense and made punishable, by a court-martial, under the sixty-second Article of War.[1] *Sec. 2, act of July 27, 1892 (27 Stat. L., 277).*

OATH OF ENLISTMENT.

Oath of enlistment.
2 Art. War.

676. These rules and articles shall be read to every enlisted man at the time of, or within six days after, his enlistment, and he shall thereupon take an oath or affirmation, in the following form: "*I, A. B., do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States of America; that I will serve them honestly and faithfully against all their enemies whomsoever; and that I will obey the orders of the President of the United States, and the orders of the officers appointed over me, according to the rules and Articles of War.*" This oath may be taken before any commissioned officer of the Army.[2] *Second Article of War.*

---

[1] For a definition of the offense of fraudulent enlistment see Circular 13, H. Q. A., of 1892; see also Dig. Opin. J. A. Gen., paragraphs 1412–1423.

[2] Enlistment is a contract, but it is one of those contracts which changes the status, and where that is changed no breach of contract destroys the new status or relieves from the obligations which its existence imposes. * * * By enlistment the citizen becomes a soldier. His relations to the State and the public are changed. He acquires a new status, with correlative rights and duties, and although he may violate his contract obligations, his status as a soldier is unchanged. He can not of his own

677. A premium of two dollars shall be paid to any citizen, noncommissioned officer, or soldier for each accepted recruit he may bring to a recruiting rendezvous.[1]

Premium for bringing. June 21, 1862, res. 37, v. 12, p. 620. Sec. 1120, R. S.

678. To fill vacancies occurring, from time to time, in the several organizations serving without the limits of the United States with trained men, the President is authorized to enlist recruits in numbers equal to four per centum of the total strength authorized for such organizations. *Section 29, act of February 2, 1901 (31 Stat. L., 756).*

Enlistments in excess of authorized strength. Feb. 2, 1901, s. 29, v. 31, p. 756.

679. The Secretary of War is authorized to detach from the Army at large such number of enlisted men as may be necessary to perform duty at the various recruiting stations, and while performing such duty one member of each party shall have the rank, pay, and allowances of a corporal of the arm of the service to which they respectively belong. *Section 31, act of February 2, 1901 (31 Stat. L., 756).*

Details for recruiting; increased rank. S. 31, *ibid.*

Historical Note.—The office of Adjutant-General, which had existed during the government under the Articles of Confederation, was created by section 7 of the act of March 5, 1792 (1 Stat. L., 241), which made provision for an adjutant who was to do the duty of an inspector: section 3 of the act of May 30, 1796 (ibid., 483), contained a similar provision for an inspector who was to do the duty of adjutant-general, but who was to continue in service until March 4, 1797, and no longer. Temporary provision seems to have been made for the performance of the duties of the department from March 4, 1797, until May, 1798, when, in anticipation of war with France, an increase of the military establishment was authorized and provision made in section 6 of the act of May 28, 1798 (ibid., 538), for the appointment of an adjutant-general with the rank and pay of a brigadier-general. Section 14 of the act of March 3, 1799 (ibid., 749), contained the requirement that the adjutant-general of the Army should be, *ex officio*, assistant inspector-general, and that deputy inspectors-general should be, *ex officio*, deputy adjutants-general, and should perform the duties of adjutants-general

---

volition throw off the garments he has once put on, nor can he, the State not objecting, renounce his relations and destroy his status on the plea that if he had disclosed truthfully the facts the other party, the State, would not have entered into the new relations with him, or permitted him to change his status. U. S. *v.* Grimley, 137 U. S., 147.

Volunteer recruiting service.—The method of enlistment in the case of volunteers is regulated by section 5 of the act of April 22, 1898 (30 Stat. L. 361), which confers authority upon the Secretary of War "to prescribe such rules and regulations, not inconsistent with the terms of this act, as may in his judgment be necessary for the purpose of examining, organizing, and receiving into service the men called for." Under the authority thus conferred regulations were prepared by the Secretary of War and promulgated to the Army in a circular from the Adjutant-General's Office under date of June 3, 1898. Section 12 of the act of March 2, 1899 (30 Stat. L., 977), authorized the recruitment of a force of 35,000 volunteers, "without restriction as to citizenship or educational qualifications." For orders regulating the enlistment and organization of this force see General Orders, No. 122 and 150, A. G. O., of 1899.

[1] This provision has become practically obsolete, as funds for the payment of the premiums therein authorized are no longer provided for in the annual acts of appropriation for the support of the military establishment.

During the period of the war of the rebellion the amount authorized by the statute was paid, not to the person bringing the recruit, but to the recruit himself as a part of the bounty due him at enlistment. By Circular No. 24, A. G. O., of 1866, this practice was discontinued and the premium was required to be paid to any military person or civilian who brought an accepted recruit to the rendezvous; but these payments were finally suspended, until further orders, by a circular dated February 11, 1868.

in the armies to which they might be assigned. These officers were disbanded on June 15, 1800, in pursuance of a requirement to that effect contained in the act of May 14, 1800 (2 ibid., 85). Section 3 of the act of March 16, 1802 (ibid., 132), provided for an adjutant and inspector of the Army, who was to be taken from the field officers. Section 4 of the act of January 11, 1812 (ibid., 671), created the office of Adjutant-General, with the rank and pay of a brigadier-general, which continued to exist until the close of the war, when it was discontinued in the reduction accomplished by the act of March 3, 1815 (3 ibid., 224). The duties of the department were again performed by officers temporarily detailed for the purpose for a little more than a year, when, by the act of April 24, 1816 (3 ibid., 297), the temporary establishment was made permanent and the strength of the department was fixed at one Adjutant and Inspector-General (brigadier-general), one assistant adjutant-general (colonel) for each division, and one assistant adjutant-general (major) for each brigade. At the general reduction of 1821 the department was reduced to a single officer—an Adjutant-General of the Army—with the rank of a colonel of cavalry. By section 7 of the act of July 5, 1838 (5 ibid., 256), two assistant adjutants-general (brevet majors) and four brevet captains were added to the department. By section 6 of the act of June 18, 1846 (9 ibid., 17), four assistant adjutants-general were added for the period of the existing war; by section 2 of the act of March 3, 1847 (ibid., 184), one lieutenant-colonel and two brevet captains were authorized under the same restriction as to tenure of office. By section 3 of the act of July 19, 1848 (ibid., 247), the limitation contained in the two acts last cited was removed, and the establishment, as it existed at the close of the war with Mexico, was made permanent; the vacancies were not to be filled, however, until the further order of Congress; but, by section 4 of the act of March 2, 1849 (ibid., 351), this restriction was repealed and the President was authorized to make appointments and promotions in the department as then constituted by law.

At the outbreak of the war of the rebellion the department was reorganized, its composition being fixed by the act of August 3, 1861 (12 Stat. L., 287), at 1 brigadier-general, 1 colonel, 2 lieutenant-colonels, 4 majors, and 12 captains. By section 22 of the act of July 17, 1862 (ibid., 597), 1 colonel, 2 lieutenant-colonels, and 9 majors were added to the establishment, with the requirement that vacancies in the grade of major should thereafter be filled by selections from captains in the Army. By section 10 of the act of July 28, 1866 (14 ibid., 333), the composition of the department was fixed as follows: One brigadier-general, 2 colonels, 4 lieutenant-colonels, and 13 majors. The grade of captain not being provided for in this enactment was thenceforward discontinued. This statute contained the requirement that vacancies in the office of Adjutant-General should thereafter be filled by selection from the officers of the department. By section 2 of the act of March 3, 1869 (15 ibid., 318), promotions and appointments in the department were forbidden until the further order of Congress, but by Joint Resolution, No. 12, of April 10, 1869 (16 ibid., 53), this statute was suspended in its operation as to vacancies which had existed on March 3, 1869. By the act of March 3, 1873 (17 ibid., 578), the appointment of 1 major to the department was authorized and, by the act of March 3, 1875 (18 ibid., 478), the restriction upon appointments and promotions, imposed by the act of March 3, 1869, was removed, and the composition of the department fixed at 1 brigadier-general, 2 colonels, 4 lieutenant-colonels, and 10 majors. By the act of February 28, 1887 (24 ibid., 434), the grades of rank of the officers constituting the department were rearranged so as to consist of 1 brigadier-general, 4 colonels, 6 lieutenant-colonels, and 6 majors, the vacancies created by the act to be filled by promotion according to seniority. By the act of August 6, 1894 (28 ibid., 234), the number of majors in the department was reduced to 4. By the act of May 18, 1898 (30 ibid., 419), the appointment of 1 colonel and 1 major was authorized, with the proviso that, upon the muster out of the volunteer forces, no promotions or appointments should be made until the number of officers of the above grades had been reduced to that authorized by the law in force prior to the passage of the act. By section 3 of the act of June 6, 1900 (31 ibid., 655), the rank of major-general was conferred upon the Adjutant-General "during the service of the present incumbent." By section 13 of the act of February 2, 1901 (31 ibid., 751), the permanent strength of the department was fixed at 1 adjutant-general with the rank of major-general, until a vacancy shall occur in the office on the expiration of the service of the present incumbent, by retirement or otherwise, and thereafter with the rank of brigadier-general, 5 assistant adjutants-general with the rank of colonel, 7 assistant adjutants-general with the rank of lieutenant-colonel, and 15 assistant adjutants-general with the rank of major. A system of details was also established, by the operation of which the permanent commissioned personnel of the department will be gradually replaced, as vacancies occur, by officers detailed from the line of the Army for duty in the Adjutant-General's Department.

CHAPTER XVI.

THE INSPECTOR-GENERAL'S DEPARTMENT.[1]

Par.
680. Composition.
681–683. Promotions and details.
684. Expert accountant.
685. Inspections of public works and disbursements.
686. The same, reports.
687. Restriction on the payment of mileage.
Par.
688. Inspection of National Home for Disabled Volunteer Soldiers.
689. Inspection of the Soldiers' Home.
690. Designation of articles for sales.
691. Administration of oaths.

ORGANIZATION.

680. The Inspector-General's Department shall consist of one inspector-general with the rank of brigadier-general, three inspectors-general with the rank of colonel, four inspectors-general with the rank of lieutenant-colonel, and nine inspectors-general with the rank of major.[2] *Sec. 14, act of February 2, 1901 (31 Stat. L., 751), act of March 2, 1901. (Ibid., 899.)*

Composition.
Feb. 2, 1901, s. 14, v. 31, p. 751; Mar.2,1901, p.899.
Sec. 1131, R.S.

PROMOTIONS AND DETAILS.

681. So long as there remain any officers holding permanent appointments in the * * * Inspector-General's Department, * * * they shall be promoted according to seniority in the several grades, as now provided by law, and nothing herein contained shall be deemed to apply to vacancies which can be filled by such promotions, or to the periods for which the officers so promoted shall hold their appointments.[3] *Sec. 26, act of February 2, 1901 (31 Stat. L., 755).*

Promotions.
Feb. 2, 1901, s. 26, v. 31, p. 755.

682. When any vacancy, except that of the chief of the department or corps, shall occur, which can not be filled by promotion as provided in this section, it shall be filled

Details.
Ibid.

---

[1] For historical note see end of chapter.

[2] The organization above set forth becomes operative upon the occurrence of a vacancy in the grade of colonel as established by the act of February 2, 1901.

[3] See also section 14, act of February 2, 1901, paragraph 680, *ante.*

by detail from the line of the Army, and no more permanent appointments shall be made in those departments or corps.[1] *Ibid.*

The same. *Ibid.*

683. Such details shall be made from the grade in which the vacancies exist, under such system of examination as the President may from time to time prescribe. *Ibid.*

Expert accountant. Feb. 24, 1891, v. 26, p. 773.

684. For pay of one expert accountant for the Inspector-General's Department, to be appointed in case of vacancy, by the Secretary of War, two thousand five hundred dollars.[2] *Act of February 24, 1891 (26 Stat. L., 773).*

DUTIES.[3]

Inspections of public works and disbursements. Apr. 20, 1874, v. 18, p. 33.

685. It shall be the duty of the Secretary of War to cause frequent inquiries to be made as to the necessity, economy, and propriety of all disbursements made by disbursing officers of the Army, and as to their strict con-

---

[1] For statutory regulations respecting details to the staff, see the title Details to the Staff in the chapter entitled "The Staff Departments." This section replaces the requirement of the act of June 23, 1874 (18 Stat. L., 244), authorizing the detail of four officers of the line of the Army to act as assistant inspectors.

[2] For statutory provisions respecting the mileage of this officer see the act of February 27, 1893 (27 Stat. L., 480). Par. 847, *post.*

[3] The duties of inspectors-general are defined in the following paragraphs of the Army Regulations of 1895 (see also G. O. 80 and 91, A. G. O. of 1898):

Officers of the Inspector-General's Department will inspect once in each year all military commands, garrisoned posts, and camps, and once in two years such ungarrisoned posts and national cemeteries as can be visited without departing materially from the routes of other prescribed inspections. (Par. 867, A. R., 1895.)

Inspections of the Military Academy will be made only under specific instructions given in each case by the Secretary of War, and inspections of the service schools, in so far as they are distinct from posts, under similar instructions given by the Secretary of War or the Commanding General of the Army. (Par. 869, ibid.)

The military department of civil institutions of learning at which officers of the Army are detailed will be inspected annually, near the close of the college year, under specific instructions. The inspecting officer, upon his arrival at the institutions, will apply to the president or the administrative officer thereof for such aid or facilities as he may require. His report will be sent to the Inspector-General of the Army, then to the Adjutant-General of the Army for note and return, and a copy furnished the president of the institution by the War Department. (Par. 870, ibid.)

The sphere of inquiry of the Inspector-General's Department includes every branch of military affairs, except when specially limited in these regulations or in orders. Inspectors-general and acting inspectors-general will exercise a comprehensive and general observation within their respective districts over all that pertains to the efficiency of the Army, the condition and state of supplies of all kinds, of arms and equipments, of the expenditure of public property and moneys, and the condition of accounts of all disbursing officers of every branch of the service; of the conduct, discipline, and efficiency of officers and troops, and report with strict impartiality in regard to all irregularities that may be discovered. From time to time they will make such suggestions as may appear to them practicable for the cure of any defect that may come under their observation. Par. 857, ibid.

Inspectors-general and acting inspectors-general are under the orders of the Secretary of War and the Commanding General of the Army only, and all orders not confidential will be issued from the Adjutant-General's Office and transmitted to them through the Inspector-General of the Army. They will make the general inspections within the limits of their respective districts, and will each be allowed the necessary clerks and one messenger, who will be assigned by the Secretary of War. (Par. 858, ibid.)

See also paragraphs 720, 859–866, 872–875, and 878–889, A. R., 1895.

The sphere of inquiry of the Inspector-General's Department includes every branch of military affairs except when specially limited in these regulations or in orders.

formity to the law appropriating the money; also to ascertain whether the disbursing officers of the Army comply with the law in keeping their accounts and making their deposits; such inquiries to be made by officers of the Inspection Department of the Army, or others detailed for that purpose: *Provided*, That no officer so detailed shall be in any way connected with the department or corps making the disbursement. *Act of April 20, 1874 (18 Stat. L., 33).*

686. That the reports of such inspections shall be made out and forwarded to Congress with the annual report of the Secretary of War. *Ibid.*[1] Reports of inspections.

687. Hereafter no portion of the appropriation for mileage to officers traveling on duty without troops shall be expended for inspections or investigations, except such as are especially ordered by the Secretary of War, or such Limitation on mileage. Aug. 6, 1894, v. 28, p. 237.

Inspectors-general and acting inspectors-general will exercise a comprehensive and general observation within their respective districts over all that pertains to the efficiency of the Army, the condition and state of supplies of all kinds, of arms and equipments, of the expenditure of public property and moneys, and the condition of accounts of all disbursing officers of every branch of the service; of the conduct, discipline, and efficiency of officers and troops, and report with strict impartiality in regard to all irregularities that may be discovered. From time to time they will make such suggestions as may appear to them practicable for the cure of any defect that may come under their observation. Par. 857, ibid.

[1] INSPECTIONS OF PUBLIC WORKS AND DISBURSEMENTS.

The inspection contemplated in this provision is that required by the act of April 20, 1874 (18 Stat. L., 33). See also Chapter XLI, entitled THE NATIONAL HOME FOR DISABLED VOLUNTEER SOLDIERS.

All depots, armories, arsenals, and public works of every kind under charge of officers of the Army, except works of engineering conducted under the direction of the Secretary of War and supervision of the Chief of Engineers, will be inspected annually by officers of the Inspector-General's Department. These inspections will include military and business administration and methods, but will not extend to the scientific or technical character of work, for which the officer in charge is responsible, through the head of his department, to the Secretary of War. Par. 868, A. R., 1895.

The inspection of disbursements and money accounts of disbursing officers required by act of April 20, 1874, will be made by officers of the Inspector-General's Department or others detailed for that purpose, and, as far as practicable, at irregular intervals, but no officer so detailed shall be in any way connected with the corps or staff department making the disbursement. The frequency of these inspections will be regulated by the Secretary of War. Par. 871, ibid.

Inspectors-general and acting inspectors-general will inquire as to the necessity, economy, and propriety of all disbursements, their strict conformity to the law appropriating the money, and whether the disbursing officers comply with the law in keeping their accounts and making their deposits. A statement of receipts and expenditures and of the distribution of funds, with a list of outstanding checks, on forms furnished by the Inspector-General of the Army, will be submitted by the disbursing officer to the inspector, who should immediately transmit the list of outstanding checks to the several depositories. Upon return from a depository, balances will be verified and noted on the inspection report, which will then be forwarded to the Inspector-General. The list of outstanding checks will be retained by the inspector, and a copy, with indorsements thereon, sent to the Inspector-General. Par. 876, ibid.

When an officer ceases to act as a disbursing officer he will submit to the officer to whom the inspection of his accounts has been assigned a statement of his money accounts from date of last inspection to and including the closing of his accounts, with a list of outstanding checks. If an inspection be impracticable, the statement will be forwarded to the Inspector-General of the Army. Par. 877, ibid.

as are made by army and department commanders in visiting their commands, and those made by Inspector-General's Department in pursuance of law, Army Regulations, or orders issued by the Secretary of War or the Commanding General of the Army; and all orders involving the payment of mileage shall state the special duty enjoined.[1] *Act of August 6, 1894 (28 Stat. L., 237).*

Inspection of Volunteer Soldiers' Homes.
Mar. 3, 1893, v. 27, p. 653.

688. The Secretary of War shall hereafter exercise the same supervision over all receipts and disbursements on account of the Volunteer Soldiers' Homes as he is required by law to apply to the accounts of disbursing officers of the Army. *Act of March 3, 1893 (27 Stat. L., 653).*

Inspector-General of Army to inspect and make report, etc.
Sec. 2, Mar. 3, 1883, v. 22, p. 564.

689. The Inspector-General of the Army shall, in person, once in each year thoroughly inspect the [Soldiers'] Home, its records, accounts, management, discipline, and sanitary condition, and shall report thereon in writing, together with such suggestions as he desires to make.[2] *Sec. 2, act of March 3, 1883 (22 Stat. L., 564).*

Inspectors-general to designate articles for sale, etc.
Sec. 25, July 28, 1866, v. 14, p. 336.
Sec. 1144, R.S.

690. The officers of the Subsistence Department shall procure, and keep for sale to officers and enlisted men at cost prices, for cash or on credit, such articles as may, from time to time, be designated by the inspectors-general of the Army. An account of all sales on credit shall be kept, and the amounts due for the same shall be reported monthly to the Paymaster-General. *See sections 1299 and 1300, Rev. Stat. (paragraphs 659 and 660, post).*

Oaths, when administered by officers, etc.
April 10, 1869, Res. No. 15, s. 2, v. 16, p. 55; Mar. 7, 1870, c. 23, v. 16, p. 75; Mar. 2, 1901, v. 31, p. 951.
Sec. 183, R. S.

691. Any officer or clerk of any of the departments lawfully detailed to investigate frauds on or attempts to defraud the Government, or any irregularity or misconduct of any officer or agent of the United States, and any officer of the Army detailed to conduct an investigation, and the recorder, and, if there be none, the presiding officer of any military board appointed for such purpose, shall have authority to administer an oath to any witness attending to testify or depose in the course of such investigation. *Act of March 2, 1901 (31 Stat. L., 951).*

---

[1] The expense for transportation to a point not located on a railroad incurred by an officer of the Inspector-General's Department in inspecting unserviceable river and harbor material, is properly payable from the appropriation for the river and harbor work. III Compt. Dec., 3.

[2] The act of January 19, 1891 (26 Stat. L., 722), required an officer of this Department, at least once each year, to visit the military prison at Fort Leavenworth, Kansas, "for the purpose of examining into the books and all the affairs thereof, and ascertaining whether the laws, rules, and regulations relating thereto are complied with, the officers are competent and faithful, and the convicts properly governed and employed, and at the same time treated with humanity and kindness. And it shall be the duty of the inspector, at once, to make full report thereof to the Secretary of War."

Historical note.—The Inspector-General's Department had existed during the war of the Revolution, the office of Inspector-General having been held by Baron Steuben, whose appointment was approved by Congress in a resolution dated May 25, 1778. During the incumbency of Baron Steuben a system of drill regulations was prepared and introduced, which continued in use until replaced, in part, by the system prepared by Col. Alexander Smyth in 1810, being finally superseded by the drill regulations prepared by Major-General Scott in 1821. On June 25, 1788, in conformity to a resolution of Congress of that date, the Inspector's Department ceased to exist, and the inspection of the troops was conducted for a time by officers of the line detailed for the purpose. By section 4 of the act of April 30, 1790 (1 Stat. L., 119), the appointment of one Inspector was authorized for the establishment created by that enactment. The act of March 5, 1792 (ibid., 241), merged the duties of the Adjutant and Inspector-General's Departments and made provision for an Adjutant who was to do the duty of an Inspector; section 3 of the act of May 30, 1796 (ibid., 483), made similar provision for an Inspector who was to do the duty of an Adjutant. The acts of March 3, 1797 (ibid., 507), and May 22, 1798 (ibid., 557), authorized the detail of an officer of the line to perform the duties of Inspector-General. Section 6 of the act of May 28, 1798 (ibid., 588), passed in contemplation of war with France, authorized the appointment of an Inspector-General with the rank of major-general, and on July 18, 1798, Gen. Alexander Hamilton was appointed to the vacancy. The temporary military establishment thus authorized, which was never fully completed, was disbanded by the acts of February 20, 1800 (2 ibid., 7), and May 14, 1800 (ibid., 85) and the duties of the Department were again performed by detail until the office of Inspector was created by section 4 of the act of March 16, 1802 (ibid., 132); by section 3 of the act of April 12, 1808 (ibid., 481), two brigade inspectors were authorized to be detailed from the line with increased rank; by the act of December 24, 1811 (ibid., 669), the office of Inspector-General (brigadier-general) was created and two assistants (lieutenant-colonels) were authorized; the duties of the Department were defined in regulations approved by the Secretary of War on November 4, 1812. By the act of March 3, 1813 (ibid., 819), the Adjutant and Inspector-General's Departments were again merged. The act of March 3, 1815 (3 ibid., 224), fixing the peace establishment, made no express provision for these Departments, their duties being performed by officers temporarily detailed for the purpose. By section 10 of the act of April 24, 1816 (ibid., 297), however, the temporary establishment which had existed since 1815 was made permanent. Provision was also made for an Adjutant and Inspector-General of the Army, together with an inspector-general to each division and an assistant to each brigade, which were to be filled by detail of officers from the line. At the general reduction of 1821 the Inspector-General's Department was recognized and continued by section 6 of the act of March 2, 1821 (ibid., 615), its composition being fixed at two inspectors-general with the rank and pay of colonels of cavalry. By section 4 of the act of August 23, 1842 (5 ibid., 512), the Department was reduced to one officer; the disbanded officer was restored, however, by the act of June 12, 1846 (9 ibid., 2), and the composition of the Department, as thus established, underwent no change until the outbreak of the war of the rebellion.

By section 2 of the act of August 3, 1861 (12 ibid., 287), five majors were added to the Department; by section 4 of the act of August 6, 1861 (ibid., 318), two colonels were authorized; and provision for the inspection service of the armies in the field was made by section 10 of the act of July 17, 1862 (ibid., 299), which authorized the rank and pay of lieutenant-colonel of cavalry to be conferred upon the inspectors-general of Army corps. By section 11 of the act of July 28, 1866 (14 ibid., 334), the composition of the Department was fixed as follows: Four colonels, three lieutenant-colonels, and two majors. Section 6 of the act of March 3, 1869 (15 ibid., 318), contained the requirement that there should be no promotions or appointments in the staff until otherwise directed by law; by the acts of June 8, 1872 (17 ibid., 338), and June 16, 1874 (18 ibid., 77), promotions were authorized to correct inequalities in the rank of officers of the Department. By the act of June 23, 1874 (ibid., 244), the restriction contained in the act of March 3, 1869, was removed and the strength of the Department fixed at one Inspector-General with the rank of colonel, two inspectors-general with the rank of lieutenant-colonel, and two inpectors-general with the rank of major; authority was also conferred for the detail of four officers from the line of the Army for service as assistant inspectors-general, who were to receive the mounted pay of their grades, and no appointments were to be made to the grade of major until the number of officers in the Department had been reduced to five. By the act of December 12, 1878 (20 ibid., 257), the rank of brigadier-general was conferred upon the senior inspector-general. By the act of February 5, 1885 (23 ibid., 297), the composition of the Department was fixed as follows: One Inspector-General (brigadier-general), two colonels, two lieutenant-colonels, and two majors. It was also provided that the Inspector-General should be selected from the officers of the corps, that promotions should be by seniority in the Department, and that appointments to the grade of major should be made from the captains in the line of the Army. By the act of July 7, 1898 (30 ibid., 720), one colonel, one lieutenant-colonel, and one major were added to the Department under the conditions above set forth.

By section 14 of the act of February 2, 1901 (31 ibid., 751), the permanent strength of the Department was fixed at one Inspector-General with the rank of brigadier-general, four inspectors-general with the rank of colonel, four inspectors-general with the rank of lieutenant-colonel, and eight inspectors-general with the rank of major. A system of details was also established, by the operation of which the permanent commissioned personnel of the Department will be gradually replaced, as vacancies occur, by officers detailed from the line of the Army for duty in the Inspector-General's Department.

The act of March 3, 1901 (31 Stat. L., 899), modified the organization prescribed in the act of February 2, 1901, by the insertion of the requirement that, upon the occurrence of a vacancy in the grade of colonel, after the present lieutenant-colonels shall have been promoted or retired, the vacancy shall not be filled and thereafter the number of officers authorized for the Department shall be as follows: One Inspector-General with the rank of brigadier-general, three inspectors-general with the rank of colonel, four inspectors-general with the rank of lieutenant-colonel, and nine inspectors-general with the rank of major.

CHAPTER XVII.

THE JUDGE-ADVOCATE-GENERAL'S DEPARTMENT.[1]

Par.
692. Organization.
693–695. Promotions, appointments, details.
696, 697. Duties.
698. Professor of law at the Military Academy.

Par.
699. Administration of oaths.
700. Records of inferior courts.
701. The same, summary courts.

ORGANIZATION.

692. The Judge-Advocate-General's Department[2] shall consist of one Judge-Advocate-General with the rank of brigadier-general, two judge-advocates with the rank of colonel, three judge-advocates with the rank of lieutenant-colonel, six judge-advocates with the rank of major, and for each geographical department or tactical division of troops not provided with a judge-advocate from the list of officers holding permanent commissions in the Judge-Advocate-General's Department, one acting judge-advocate with the rank, pay, and allowances of captain mounted.[3] *Sec. 15, act of February 2, 1901 (31 Stat. L., 751).*

Composition.
Feb. 2, 1901.
S. 15, v. 31, p. 751.
Sec. 1198, R.S.

PROMOTIONS, APPOINTMENTS, DETAILS.

693. Promotions in the Judge-Advocate-General's Department, as provided in the first section of this act, shall be by seniority up to and including the rank of colonel. *Sec. 2, act of July 5, 1884 (23 Stat. L., 113).*

Promotions.
July 5, 1884.
S. 2, v. 23, p. 113.

694. Vacancies created or caused by this act in the grade of major may be filled by appointment of officers holding commissions as judge-advocates of volunteers since April 21, 1898. Vacancies which may occur thereafter in the grade of major in the Judge-Advocate-General's Depart-

Appointments.
Feb. 2, 1901.
S. 15, v. 31, p. 751.

---

[1] For historical note see end of chapter.

[2] Sections 1198 and 1200 of the Revised Statutes and section 2 of the act of June 23, 1874 (18 Stat. L., 244), were replaced by the act of July 5, 1884 (23 Stat. L., 117), which merged the Bureau of Military Justice and the corps of judge-advocates in the Judge-Advocate-General's Department, created by that statute.

[3] This section repeals and replaces section 1 of the act of July 5, 1884 (23 Stat. L., 117), *in pari materia*.

ment shall be filled by the appointment of officers of the line, or of persons who have satisfactorily served as judge-advocates of volunteers since April 21, 1898, or of persons from civil life not over thirty-five years of age. *Sec. 15, act of February 2, 1901 (31 Stat. L., 751).*

Details. Feb. 2, 1901, s. 15, v. 31, p. 751.

695. Acting judge-advocates provided for herein shall be detailed from officers of the grades of captain or first lieutenant of the line of the Army, who, while so serving, shall continue to hold their commissions in the arm of service to which they permanently belong. Upon completion of a tour of duty, not exceeding four years, they shall be returned to the arm in which commissioned, and shall not be again detailed until they shall have completed two years duty with the arm of service in which commissioned. *Sec. 15, act of February 2, 1901 (31 Stat. L., 751).*

DUTIES.

Duties of the Judge-Advocate-General. Sec. 1199, R. S.

696. The Judge-Advocate-General shall receive, revise and cause to be recorded the proceedings of all courts-martial, courts of inquiry, and military commissions, and perform such other duties as have been performed heretofore by the Judge-Advocate-General of the Army.[1]

Duties of judge advocates. Sec. 1201, R. S.

697. Judge-advocates shall perform their duties under the direction of the Judge-Advocate-General.

---

[1] The work done in his office and for which this officer is responsible consists mainly of the following particulars: Reviewing and making reports upon the proceedings of trials by court-martial of officers, enlisted men, and cadets, and the proceedings of courts of inquiry; making reports upon applications for pardon or mitigation of sentence; preparing and revising charges and specifications prior to trial, and instructing judge-advocates in regard to the conduct of prosecutions; drafting of contracts, bonds, etc.; as also for execution by the Secretary of War of deeds, leases, licenses (see License), grants of rights of way, approvals of location of rights of way, approvals of plans of bridges and other structures, notices to alter bridges as obstructions to navigation, etc.; framing of bills, forms of procedure, etc.; preparing of opinions upon questions relating to the appointment, promotion, rank, pay, allowances, etc., of officers, enlisted men, etc., and to their amenability to military jurisdiction and discipline; upon the civil rights, liabilities, and relations of military persons and the exercise of the civil jurisdiction over them; upon the employment of the Army in execution of the laws; upon the discharge of minors, deserters, etc., on habeas corpus; upon the administration of military commands, the care and government of military reservations, and the extent of the United States and State jurisdictions over such reservations or other lands of the United States; upon the proper construction of appropriation acts and other statutes; upon the interpretation and effect of public contracts between the United States and individuals or corporations; upon the validity and disposition of the varied claims against the United States presented to the War Department; upon the execution of public works under appropriations by Congress; upon obstructions to navigation as caused by bridges, dams, locks, piers, harbor lines, etc., upon the riparian rights of the United States and of States and individuals on navigable waters, etc.; and the furnishing to other departments of the Government of statements and information apposite to claims therein pending, and to individuals of copies of the records of their trials under the one hundred and fourteenth article of war. The matter of the submitting to the Judge-Advocate-General of applications for opinions is regulated by paragraph 853, Army Regulations of 1901.

The Judge-Advocate-General's Department is the Bureau of Military Justice. The

698. The Secretary of War may assign one of the judge-advocates of the Army to be professor of law.[1] *Act of June 6, 1874 (18 Stat. L., 60).*

Professor of law. June 6, 1874, v. 18, p. 60.

699. Judge-advocates of departments and of courts-martial and the trial officers of summary courts are hereby authorized to administer oaths for the purposes of military justice and for other purposes of military administration. *Sec. 4, act of July 27, 1892 (27 Stat. L., 278).*

Judge-advocates of departments and of courts-martial may administer oaths for certain purposes. Sec. 4, July 27, 1892, v. 27, p. 278.

700. Hereafter the records of regimental, garrison, and field officers [and] courts-martial shall, after having been acted upon, be retained and filed in the judge-advocate's office at the headquarters of the department commander in whose department the courts were held for two years, at the end of which time they may be destroyed. *Act of March 3, 1877 (19 Stat. L., 310).*

Disposition of proceedings of certain minor courts-martial. Mar. 3, 1877, v. 19, p. 310.

701. Post and other commanders shall, in time of peace, on the last day of each month, make a report to the department headquarters of the number of cases determined by the summary court during the month, setting forth the offenses committed and the penalties awarded, which report shall be filed in the office of the judge-advocate of the department, and may be destroyed when no longer of use. *Sec. 4, act of June 18, 1898 (30 Stat. L., 483).*

The same. June 18, 1898, s. 4, v. 30, p. 483.

Judge-Advocate-General is the custodian of the records of all general courts-martial, courts of inquiry, and military commissions, and of all papers relating to the title of lands under the control of the War Department, except the Washington Aqueduct and the public buildings and grounds in the District of Columbia. The officers of this department render opinions upon legal questions when called upon by proper authority. Par. 991, A. R., 1901.

The original proceedings of all general courts-martial, courts of inquiry, and military commissions, with the decisions and orders of the reviewing authorities made thereon, and the proceedings of all general courts-martial, courts of inquiry, and military commissions which require the confirmation of the President, but which have not been appointed by him, will be forwarded direct to the Judge-Advocate-General. One copy of the order promulgating the action of the court and a copy of every subsequent order affecting the case will be forwarded to the Judge-Advocate-General, with the record of each case. When more than one case is embraced in a single order, a sufficient number of copies will be forwarded to enable one to be filed with each record. The proceedings of all courts and military commissions appointed by the President will be sent direct to the Secretary of War. Par. 993, A. R., 1901.

Applications of officers, enlisted men, and military prisoners for copies of proceedings of general courts-martial, to be furnished them under the one hundred and fourteenth article of war, will, when received by post or other commanders, be forwarded direct to the Judge-Advocate-General. Par. 995, A. R., 1910.

Communications relating to proceedings of military courts on file in the Judge-Advocate-General's Department will be addressed and forwarded direct by department commanders to the Judge-Advocate-General. In routine matters the Judge-Advocate-General and judge-advocates may correspond with each other direct. Par. 996, A. R., 1901.

The reports which the Judge-Advocate-General may render upon cases received by him, and which require the action of the President, will be addressed to the Secretary of War and will be forwarded, through the Commanding General of the Army, for such remarks and recommendations as he may see fit to make. Par. 997, A. R., 1901.

[1] But, see the act of June 1, 1880 (21 Stat. L., 153), which authorizes any officer of the Army to be so detailed. The act of June 27, 1881, contained a similar requirement.

HISTORICAL NOTE.—The office of Judge-Advocate of the Army was created during the war of the Revolution, having been established by resolution of Congress of July 25, 1775 (Journals of Cong.), soon after the enactment of the Articles of War on June 29 of the same year. In the reenactment of the Articles, in 1776, this officer was styled the Judge-Advocate-General of the Army and was empowered to prosecute in the name of the United States or to conduct such prosecutions by deputy. The office of Judge-Advocate ceased to exist at the disbandment of the Revolutionary armies, but was revived by section 2 of the act of March, 3, 1797 (1 Stat. L., 507), which made provision for a Judge-Advocate, to be taken from the commissioned officers of the line, who was to receive the same pay and allowances as the brigade major (adjutant) and inspector therein authorized. This office, with other offices in the general staff, was discontinued by the act of March 16, 1802 (2 ibid., 132). Section 19 of the act of 1812 (ibid., 674), passed in contemplation of war with England, made provision for one judge-advocate, with the rank of major, to each division, and this number was increased to three by section 2 of the act of April 24, 1816 (3 ibid., 397). At the reduction of 1818 these officers were disbanded (act of April 14, 1818, 3 ibid., 426), and the office of Judge-Advocate of the Army was discontinued by the act of March 2, 1821 (ibid., 615).

By section 4 of the act of March 3, 1849 (9 ibid., 351), the office of Judge-Advocate of the Army was reestablished, with the rank and pay of major of cavalry. By section 5 of the act of July 17, 1862 (12 ibid., 598), the office of Judge-Advocate-General was created, with the rank and pay of brigadier-general; by this enactment the duties of the office were defined. By section 5 of the same statute provision was made for a corps of judge-advocates, one of whom was to be assigned to duty at the headquarters of each army in the field. By section 5 of the act of June 20, 1864 (13 ibid., 145), the Bureau of Military Justice was established, to which the Judge-Advocate-General was transferred, and an Assistant Judge-Advocate-General, with the rank of colonel of cavalry, was authorized. By section 12 of the act of July 28, 1866 (14 ibid., 334), the composition of the department was fixed at one Judge-Advocate-General (brigadier-general), one Assistant Judge-Advocate-General (colonel), and ten judge-advocates were added to the military establishment, who were to be selected by the Secretary of War from the corps of judge-advocates authorized by the act of July 17, 1862. By this statute the office of Solicitor of the War Department was discontinued, the duties of the office being merged in the Bureau of Military Justice. By section 3 of the act of March 3, 1869 (15 Stat. L., 318), all appointments and promotions in the several departments of the staff were prohibited until otherwise directed by law; but this restriction was removed, as to the Bureau of Military Justice, by the act of April 10, 1869 (16 ibid., 44), which fixed the number of judge-advocates at eight. By section 2 of the act of June 23, 1874 (18 ibid., 244), the office of Assistant Judge-Advocate-General was discontinued, and it was provided that there should be no appointments to the grade of major until the number of officers of that grade had been reduced to four. By the act of July 5, 1884 (23 ibid., 113), the Bureau of Military Justice and the corps of judge-advocates were consolidated and merged in the Judge-Advocate-General's Department, the composition of which was fixed as follows: One Judge-Advocate-General (brigadier-general), one Asssistant Judge-Advocate-General (colonel), three deputy judge-advocates-general (lieutenant-colonels), and three judge-advocates (majors). Promotion to the grade of colonel was to be by seniority, and provision was made for the detail of officers of the line as judge-advocates of military departments, who were to have, while so serving, the rank and pay of captains mounted.

By section 15 of the act of February 2, 1901 (31 ibid., 751), the permanent strength of the Department was fixed at one Judge-Advocate-General with the rank of brigadier-general, two judge-advocates with the rank of colonel, three judge-advocates with the rank of lieutenant-colonel, and six judge-advocates with the rank of major. The system of details of officers of the grade of captain or first lieutenant to serve as acting judge-advocates, and, while so serving, to have the rank, pay, and allowances of captains mounted, as established by the act of July 5, 1884 (23 Stat. L., 113), was recognized and continued.

CHAPTER XVIII.

THE QUARTERMASTER'S DEPARTMENT.[1]

Par.
702. Organization.
703–705. Promotions, transfers, details.
706. Military storekeeper.
707. Post quartermaster-sergeants.
708–711. Duties.
712–719. The procurement of supplies.
720–727. Transportation.
Par.
728–732. Public animals, veterinarians.
733–739. Barracks and quarters.
740, 741. Fuel and forage.
742–747. Extra-duty pay.
748. Civilian employees.
749–757. Clothing.

ORGANIZATION.

Composition.
Feb. 2, 1901, s. 16, v. 31, p. 751.
Sec. 1132, R. S.

702. The Quartermaster's Department shall consist of one Quartermaster-General with the rank of brigadier-general, six assistant quartermasters-general with the rank of colonel, nine deputy quartermasters-general with the rank of lieutenant-colonel, twenty quartermasters with the rank of major, sixty quartermasters with the rank of captain, mounted, * * * and one hundred and fifty quartermaster-sergeants.[2] *Sec. 16, act of February 2, 1901* (*31 Stat. L.*, *751*).

PROMOTIONS, TRANSFERS, AND DETAILS.

Promotions.
Feb. 2, 1901, s. 26, 31, p. 755.

703. So long as there remain any officers holding permanent appointments in the * * * Quartermaster's Department * * * including those appointed to original vacancies in the grades of captain and first lieutenant under provisions of sections sixteen, seventeen, twenty-one, and twenty-four of this act, they shall be promoted according to seniority in the several grades, as now provided by law, and nothing herein contained shall be deemed to apply to vacancies which can be filled by such promotions or to the periods for which officers so promoted shall hold their appointments. *Sec. 26, act of February 2, 1901 (31 Stat. L., 755).*

---

[1] For historical note see end of chapter.

[2] Section 16 of the act of February 2, 1901 (31 Stat. L., 752), contained the requirement that "the President is authorized to continue in the service, during the present emergency, for duty in the Philippine Islands and on transports, twenty-four captains and assistant quartermasters of volunteers." The same enactment provided that "all vacancies in the grade of colonel, lieutenant-colonel, and major created or caused by this section shall be filled by promotion according to seniority as now prescribed by law." It also provided "that to fill original vacancies in the grade of captain created by this act in the Quartermaster's Department the President is authorized to appoint officers of volunteers commissioned in the Quartermaster's Department since April 21, 1898." See also a clause extending the scope of selection in such appointments in paragraph 578, *ante*.

Details. *Ibid.*

704. When any vacancy, except that of the chief of the department or corps, shall occur, which can not be filled by promotion as provided in this section, it shall be filled by detail from the line of the Army, and no more permanent appointments shall be made in those departments or corps. *Ibid.*

The same. *Ibid.*

705. Such details shall be made from the grade in which the vacancies exist, under such system of examination as the President may from time to time prescribe.[1] *Ibid.*

Office of storekeeper discontinued.

Mar. 2, 1899, v. 30, p. 977.

706. When a vacancy shall occur through death, retirement, or other separation from active service in the office of storekeeper in the Quartermaster's Department and Ordnance Department, respectively, now provided for by law, said offices shall cease to exist.[2] *Acts of March 2, 1899 (30 Stat. L., 977), and February 2, 1901 (31 Stat. L., 748).*

POST QUARTERMASTER-SERGEANTS.

Post quartermaster - sergeants.

July 5, 1884, v. 23, p. 109; July 8, 1898, v. 30, p. 728.

Feb. 2, 1901, v. 30, p. 751.

707. That the Secretary of War is authorized to appoint, on the recommendation of the Quartermaster-General, as many post quartermaster-sergeants, not to exceed one hundred and fifty,[3] as he may deem necessary for the interests of the service, said sergeants to be selected by examination from the most competent enlisted men of the Army who have served at least four years, and whose character and education shall fit them to take charge of public property and to act as clerks and assistants to post and other quartermasters. Said post quartermaster-sergeants shall, so far as practicable, perform the duties of storekeepers and clerks, in lieu of citizen employees. The post quartermaster-sergeants shall be subject to the Rules and Articles of War and shall receive for their services the same pay and allowances as ordnance-sergeants.[1] *Acts of July 5, 1884 (23 Stat. L., 109), July 8, 1898 (30 Stat. L., 728), and February 2, 1901 (31 ibid., 751).*

---

[1] For statutory regulations respecting details to the staff, see the title *Details to the Staff*, in the chapter entitled THE STAFF DEPARTMENTS.

[2] The above statute replaces a similar restriction which was contained in section 2 of the act of March 3, 1875 (18 Stat. L., 339); the act of February 2, 1901, contained the same restriction. The office of storekeeper in the Quartermaster's Department, by the retirement of the last incumbent, has ceased to exist as a grade of rank on the active list.

[3] Twenty-five post quartermaster-sergeants added to the existing establishment by the act of July 8, 1898 (30 Stat. L., 728); forty added by section 16, act of February 2, 1901 (31 ibid., 751).

DUTIES.

708. It shall be the duty of the officers of the Quartermaster's Department, under the direction of the Secretary of War, to purchase and distribute to the Army all military stores and supplies, requisite for its use, which other corps are not directed by law to provide; to furnish means of transportation for the Army, its military stores and supplies, and to provide for and pay all incidental expenses of the military service which other corps are not directed to provide for and pay.

Duties.
Mar. 28, 1812, c. 46, ss. 3, 5, v. 2, pp. 696, 697; Aug. 23, 1842, c. 186, s. 3, v. 5, p. 513; May 18, 1826, c. 74, s. 1, v. 4, p. 173.
Sec. 1133, R.S.

709. The Secretary of War shall from time to time define and prescribe the kinds as well as the amount of supplies to be purchased by the Subsistence and Quartermaster Departments of the Army, and the duties and powers thereof respecting such purchases; and shall prescribe general regulations for the transportation of the articles of supply from the places of purchase to the several armies, garrisons, posts, and recruiting places, for the safe-keeping of such articles, and for the distribution of an adequate and timely supply of the same to the regimental quartermasters, and to such other officers as may by virtue of such regulations, be intrusted with the same; and shall fix and make reasonable allowances for the store rent and storage necessary for the safe-keeping of all military stores and supplies.

Kind and amount of supplies to be prescribed by Secretary of War.
Mar. 3, 1813, c. 48, s. 5, v. 2, p, 817.
Sec. 219, R. S.

710. The officers of the Quartermaster's Department shall, upon the requisition of the naval or marine officer commanding any detachment of seamen or marines under orders to act on shore, in cooperation with land troops, and during the time such detachment is so acting or proceeding to act, furnish the officers and seamen with camp equipage, together with transportation for said officers, seamen, and marines, their baggage, provisions, and cannon, and shall furnish the naval officer commanding any such detachment, and his necessary aids, with horses, accouterments, and forage.

Supplies to naval and marine detachments.
Dec. 15, 1814, c. 13, ss. 1, 2, v. 3, p. 151.
Sec. 1135, R.S.

711. Assistant quartermasters shall do duty as assistant commissaries of subsistence when so ordered by the Secretary of War.

Subsistence duty of assistant quartermasters.
Sec. 1134, R.S.

---

[1] For corps of army service men, see chapter entitled THE MILITARY ACADEMY.

THE PROCUREMENT OF SUPPLIES.[1]

Par.
712. Method of procurement.
713. Purchases.
714. Bakeries, schools, messes.
715. Post gardens, exchanges.
716. Printing, restriction.
717. Purchase of clothing, transportation, etc.
718. Purchases from Indians.
719. Officers not to engage in trade.

Procurement of supplies. Sec. 3716, R. S.

712. The Quartermaster's Department of the Army, in obtaining supplies for the military service, shall state in all advertisements for bids for contracts that a preference shall be given to articles of domestic production and manufacure, conditions of price and quality being equal, and that such preference shall be given to articles of American production and manufacture produced on the Pacific Coast, to the extent of the consumption required by the public service there. In advertising for army supplies the Quartermaster's Department shall require all articles which are to be used in the States and Territories of the Pacific Coast to be delivered and inspected at points designated in those States and Territories; and the advertisements for such supplies shall be published in newspapers of the cities of San Francisco, in California, and Portland, in Oregon.

Purchases. Mar. 3, 1901, v. 31, p. 905.

713. Hereafter, except in cases of emergency or where it is impracticable to secure competition, the purchase of all supplies for the use of the various departments and posts of the Army and of the branches of the Army service, shall only be made after advertisement, and shall be purchased where the same can be purchased the cheapest, quality and cost of transportation and the interests of the Government considered; but every open-market emergency purchase made in the manner common among business men which exceeds in amount two hundred dollars shall be reported for approval to the Secretary of War, under such regulations as he may prescribe.[2] *Act of March 3, 1901 (31 Stat. L., 905).*

---

[1] For general provisions on this subject see the chapter entitled CONTRACTS AND PURCHASES; see also for expenditures upon buildings at military posts the chapter entitled THE PUBLIC LANDS, MILITARY RESERVATIONS, AND MILITARY POSTS. See also in respect to the construction of buildings at military posts, paragraphs 734 and 737, *post.*

[2] The acts of March 16, 1896 (29 Stat. L., 65), and March 2, 1897 (ibid. 613), contained a similar requirement. These clauses were suspended during the period of the existing war by the act of June 7, 1898 (30 Stat. L., 433). By the act of March 3, 1899 (30 Stat. L., 1350), the act of June 7, 1898, was continued in operation "for such further time as in the discretion of the Secretary of War may be found necessary, or until otherwise provided by Congress, not longer, however, than March 1, 1900. By the act of February 24, 1900 (31 Stat. L., 32), the suspension was still further extended under the same conditions until June 30, 1901.

The requirement of section 229 of the Revised Statutes that the Secretary of War shall lay before Congress at the commencement of each regular session a statement

Expenses of bakeries, post schools, messes, etc.
June 13, 1890, v. 26, p. 152; July 16, 1892, v. 27, p. 178.

714. For the current year and thereafter there may be expended from the appropriation for regular supplies the amounts required for the necessary equipments of the bakehouse to carry on post bakeries; for the necessary furniture, text-books, paper, and equipments of the post schools; for the tableware and mess furniture for kitchens and mess halls; * * * each and all for the use of the enlisted men of the Army. *Acts of June 13, 1890 (26 Stat. L., 152), July 16, 1892 (27 Stat. L., 178).*

Post gardens and exchanges.
July 16, 1892, v. 27, p. 178.

715. Hereafter no money appropriated for the support of the Army shall be expended for post gardens or exchanges; but this proviso shall not be construed to prohibit the use, by post exchanges, of public buildings or public transportation when, in the opinion of the Quartermaster-General, not required for other purposes. *Act of July 16, 1892 (27 Stat. L., 178).*

Printing.
Feb. 12, 1891, v. 28, p. 659.

716. No part of the appropriations for the Quartermaster's Department shall be expended on printing unless the same shall be done by contract, after due notice and competition, except in such cases as the emergency will not admit of the giving notice for competition; and in cases where it is impracticable to have the necessary printing done by contract the same may be done, with the approval of the Secretary of War, by the hire of the necessary labor for the purpose.[1] *Act of March 2, 1901 (31 Stat. L., 905).*

Purchases of clothing.
Sec. 3732, R. S.

717. No contract or purchase on behalf of the United States shall be made unless the same is authorized by law or is under an appropriation adequate to its fulfillment, except in the War and Navy Departments, for clothing, subsistence, forage, fuel, quarters, or transportation, which, however, shall not exceed the necessities of the current year.

Purchases from Indians.
Jan. 19, 1891, s. 4, v. 26, p. 721.

718. That the Secretary of War be, and he is hereby, authorized and directed, when making purchases for the

---

of all contracts and purchases made by him or under his direction during the year preceding; and so much of the act of July 5, 1884, as requires the Quartermaster-General and the Commissary-General of Subsistence to report all purchases made by their departments with the cost price and place of delivery to the Secretary of War for transmission to Congress annually, were repealed by the act of March 2, 1895 (28 Stat. L., 787).

[1] This provision replaces a requirement which had been embodied in the several acts of appropriation for the support of the Army since that of June 30, 1886 (24 Stat. L., 96). This enactment was suspended by the acts of June 7, 1898 (30 Stat. L., 433), and March 3, 1899 (ibid., 1350), subject to the discretion of the Secretary of War and the further order of Congress, until March 1, 1899. By the act of February 24, 1900 (31 Stat. L., 32), the suspension was extended, under the conditions above stated, to June 30, 1901.

military posts or service on or near Indian reservations, to purchase in open market, from the Indians as far as practicable, at fair and reasonable rates, not to exceed the market prices in the localities, any cattle, grain, hay, fuel, or other produce or merchandise they may have for sale or which may be required for the military service. *Sec. 4, act of January 19, 1891 (26 Stat. L., 721).*

Officers not to trade.
May 22, 1812, v. 2, p. 742.
Sec. 1138, R.S.

719. No officer belonging to the Quartermaster's Department, or doing the duty of a quartermaster or assistant quartermaster, shall be concerned, directly or indirectly, in the purchase or sale of any article intended for or appertaining to said department of service, except on account of the United States; nor shall any such officer take or apply to his own use any gain or emolument for negotiating or transacting any business connected with the duties of his office, other than that which may be allowed by law.

TRANSPORTATION.

Par.
720. Transportation of troops.
721. The same, officers traveling without troops; transportation in kind.
722. The same, land-grant roads.
723. Deduction from mileage accounts.
724. The same, tables of distances.

Par.
725. Transportation by land-grant and bond-aided roads.
726. Procurement of means of transportation.
727. Transportation of property for other departments of Government.

TRANSPORTATION OF TROOPS.

Transportation of troops, etc.
Jan. 31, 1862, c. 15, s. 4, v. 12, p. 334.
Sec. 220, R. S.

720. The transportation of troops, munitions of war, equipments, military property, and stores throughout the United States shall be under the immediate control and supervision of the Secretary of War and such agents as he may appoint.[1]

---

[1] The transportation of organized bodies, or detachments of troops under orders from competent authority directing travel to be performed, is regulated by the requirements of this section, as modified from time to time by the provisions of the annual acts of appropriation for the support of the Army. The allowance of sleeping-car accommodation to officers traveling with troops is regulated by the following requirements of General Orders No. 3, A. G. O., of 1899:

The following persons are entitled, at public expense, to a double berth in a sleeping car, or to the customary stateroom accommodations on steamers where extra charge is made for the same: Officers of the Army traveling on duty with troops; army nurses, civilian clerks and agents in the military service, when traveling under orders on public business; sergeant-majors, ordnance, commissary (post or regimental), quartermaster (post or regimental), and electrician sergeants, hospital stewards, chief musicians, chief trumpeters, principal musicians, and sergeants of the Signal Corps, when traveling under orders on public business without troops; also invalid soldiers, when so traveling on the certificate of a medical officer showing the necessity therefor.

When the number of officers traveling with troops is too small to justify the hire by the Quartermaster's Department of a standard sleeping car for their accommodation, they shall be furnished with such part of a tourist sleeping car, or other suitable sleeping car, properly curtained off for their accommodation, as the Quartermaster's Department may provide for their use during the journey.

For statutes respecting the allowance and payment of mileage to officers traveling

TRANSPORTATION TO OFFICERS TRAVELING WITHOUT TROOPS.

721. Officers who so desire may, upon application to the Quartermaster's Department, be furnished with transportation requests, exclusive of sleeping and parlor car accommodations, for the entire journey under their orders; Transportation in kind. Mar. 2, 1901, v 31, p. 901.

---

without troops see the title *Travel Allowances* in the chapter entitled THE PAY DEPARTMENT. For enactments respecting the furnishing of actual transportation (exclusive of sleeping and parlor car accommodations) see the act of February 26, 1900 (31 Stat. L., 210), paragraphs 721 to 724, *post.*

REIMBURSEMENT OF CIVILIANS FOR TRAVELING EXPENSES.

The transportation of civilian employees and their reimbursement for traveling expenses are controlled by the following paragraphs of the Army Regulations of 1895:

TRAVELING EXPENSES.

For authorized journeys of civilian employees of any branch of the military service transportation requests will be obtained when practicable, but will be obtained in every case for travel over bond-aided railroads. Par. 813, A. R., 1901.

Reimbursement of actual expenses when traveling under competent orders will be allowed under the following heads, to civilians in the employ of any branch of the military service, excepting the expert accountant of the Inspector-General's Department, paymasters' clerks, and those mentioned in the next succeeding paragraph, viz:

1. Cost of transportation (excluding parlor-car fare) over the shortest usually traveled route, when it was impracticable to furnish transportation in kind on transportation requests.
2. Cost of transfers to and from railroad stations, not exceeding 50 cents for each transfer.
3. Cost of one double berth in a sleeping car, or customary state-room accommodation on boats and steamers when extra charge is made therefor.
4. Cost of meals, not exceeding $3 per day, while en route, when meals are not included in the transportation fare paid; and not exceeding $3 per day for meals and lodgings during necessary delay en route.
5. Cost of meals and lodgings, not exceeding $3 per day, while on duty at places designated in the orders for the performance of temporary duty. Par. 814, ibid.

Veterinary surgeons of cavalry regiments traveling under proper orders, in accordance with paragraph 185, are not entitled to reimbursement under the fifth heading above given. Par. 730, A. R. 1895.

Laborers, teamsters, and employees of similar character, traveling under competent orders, will be entitled to such actual and necessary expenses of travel and subsistence as may be authorized by the chief of bureau which pays the accounts. Those in receipt of a ration under paragraph 1252 will not be allowed commutation therefor. If it be impracticable for them to carry rations in kind, rations will not be drawn for the period during which they are traveling. Par. 815, A. R. 1901.

None but the authorized items of traveling expenses of civilians will be allowed. They will in all cases be set forth in detail in each voucher for reimbursement supported by oath and, when practicable, by receipts. Par. 816, ibid.

Paymasters' clerks and the expert accountant of the Inspector-General's Department, when traveling on duty, will, when transportation in kind can not be furnished by the Quartermaster's Department, be reimbursed for cost of transportation paid by them, exclusive of parlor or sleeping car fares or transfers, and will receive in addition thereto, for all travel whether or not on transportation requests, 4 cents per mile for each mile necessarily traveled by them in the performance of duty—distance to be computed over the shortest usually traveled route. Par. 818, ibid.

Actual traveling expenses, as contemplated in the preceding paragraphs, are paid by the following departments, viz:

Pay Department.—To paymasters' clerks, the expert accountant of the Inspector-General's Department, civilians summoned as witnesses before, and authorized reporters of, military courts.

Ordnance Department.—To employees at arsenals and armories (cost of transportation included) from appropriations for the service of the Ordnance Department.

Engineer Department.—To employees on public works and fortifications (cost of transportation included) from appropriations made specifically for the work.

Quartermaster's Department.—To employees of the Quartermaster's and Subsistence and the transportation so furnished shall be a charge against the officers' mileage account, to be deducted at the rate of three cents per mile by the paymaster paying the account, the amount so deducted to be turned over to the authorized officer of the Quartermaster's Department for the credit of the appropriation for transportation of the

---

Departments, and other employees of the Army not above provided for. Par. 819, ibid. This department also furnishes transportation to maimed soldiers, etc., to enable them to procure artificial limbs (see paragraphs 948 and 949, *post*), and to soldiers who have been admitted to the Soldiers' Home.

When officers of the staff departments change station the transfer of clerks or other employees to the new stations at the expense of the United States is prohibited, except in cases of urgent necessity, for which the sanction of the Secretary of War will first be obtained. The Pay Department is excepted from this regulation. Par. 820, ibid.

The appropriation for the transportation of the Army is not applicable to the permanent repair of a public highway under the jurisdiction of a State. V Compt. Dec., 673.

TRANSPORTATION OF BAGGAGE.

In changing station an officer's authorized allowance of baggage (*a*) will be turned over to a quartermaster for transportation as freight by ordinary freight lines, unless otherwise ordered by the department commander or higher authority. No reimbursement will be made to an officer who under such circumstances sends packages by express or ships and pays for the transportation of his baggage. Par. 1118, A. R., 1895.

The baggage to be transported at public expense, including mess chests and personal baggage, upon change of station, will not exceed the following weights:

Rank.	In the field.	Changing station.
	Pounds.	*Pounds.*
Major-general	1,000	3,500
Brigadier-general	700	2,800
Field officer	500	2,400
Captain	200	2,000
First lieutenant	150	1,700
Second lieutenant and veterinarian	150	1,500
Acting assistant surgeon	150	1,200
Post and regimental noncommissioned staff officer, hospital steward, chief musician, sergeant of the Signal Corps, squadron and battalion sergeant-majors, each	....	500

These allowances are in excess of the weights transported free of charge under the regular fares by public carriers. They may be reduced pro rata by the commanding officer, if necessary, and may, in special cases, be increased by the War Department on transports by water. Shipments of officers' allowance of baggage will in all cases be made at carrier's risk, including those over roads where tariffs provide for extra charge therefor. Par. 1242, A. R. 1901.

The Quartermaster's Department will transport the authorized change of station allowance of baggage and professional books and papers for officers or enlisted men upon retirement, or who die in the service, from their last duty stations to such places within the limits of the United States as may be the homes of their families, or as may be designated by their legal representatives or executors. Par. 1243, ibid.

Transportation of change of station allowance of baggage is authorized for such contract surgeons as may be employed, when they join for duty under the first order, and also on return to their homes on the termination of their contracts, if provided for in the contracts. Graduates of the Military Academy and officers promoted from the ranks will be furnished with transportation for field allowance of baggage on their first assignment to duty as commissioned officers. With these exceptions, transportation of baggage at public expense is not authorized for officers joining for duty on first appointment to military service, nor upon reinstatement or reappointment, nor to effect transfers from one company or regiment to another at the request of parties transferred. Officers ordered on temporary duty and officers going abroad as military

---

[a] The term "baggage," in the military sense, and as used in statutes relating to the Army, embraces almost any article of personal property which does not exceed in weight the limit prescribed by Army Regulations or general orders. 3 Dig. 2d Compt. Dec., 55.

Army and its supplies.[1] *Act of March 2, 1901 (31 Stat. L., 901).*

722. When the established route of travel shall, in whole or in part, be over the line of any railroad company which, by law or agreement, is entitled to receive only fifty per centum of the compensation earned by such company for transportation services rendered the United States, officers traveling as herein provided for shall, for the travel over such roads, be furnished with transportation requests, exclusive of sleeping and parlor car accommodations, by the Quartermaster's Department.[1] *Ibid.*

Land-grant roads. *Ibid.*

---

attachés (*a*) are not entitled to such transportation. An officer detailed as attaché, however, is entitled to have his full allowance transported from the post he leaves to his home, or to the nearest convenient place of storage, and upon resuming duty in this country from such place of storage to his post of duty. While on journeys as an attaché the cost of transporting his personal baggage can not be paid by the Quartermaster's Department. (*b*) Par. 1121, A. R., 1895.

The Quartermaster's Department will furnish transportation for the prescribed regimental and company desks, for the books, papers, and instruments of staff officers necessary to the performance of their duties, and for the medical chests of medical officers; also for the professional books of officers changing station, officers ordered home for retirement, graduates of the Military Academy, and officers joining on first appointment, which they certify belong to them and pertain to their official duties; also the professional books of hospital stewards changing station, not exceeding two hundred pounds in weight. Invoices of packages turned over to the shipping officer will be accompanied by the certificate of the officer as to character of books, and a certified copy will be attached to the bill of lading issued at the initial point of shipment. The certificate as to the character of the books of a hospital steward will be given by the medical officer under whom he last served. Par. 1245, A. R., 1901.

The Quartermaster's Department will transport, for officers changing station, the number of horses for which they are legally entitled to forage, and an attendant to accompany the horses when necessary, subject to the following restrictions:

(1) That the expense paid by the United States shall not exceed $50 for each horse transported. The cost of such shipment will be ascertained in advance, and if found to exceed $50 for each horse, including transportation of attendant, if any, the excess must be prepaid by the owner, who must also pay all the expenses of the attendant other than his transportation.

(2) That the horses are owned by the officer and were used by him in the public service at the station from which he is ordered to move.

(3) The horses of retired officers or officers ordered to their homes to await retirement, or officers ordered on recruiting service or college detail, or to attend schools of instruction as student officers, or to effect a voluntary transfer, will not be transported at public expense. Par. 1069, A. R., 1895.

The Quartermaster's Department may provide transportation of baggage for enlisted men traveling under orders without troops, not to exceed the following weights:

Noncommissioned officers	pounds	100
Privates of the Hospital Corps	do	100
Other privates	do	50

This allowance will accompany each man on the conveyance by which he is transported, and will include the number of pounds of baggage carried free on the passage ticket. Par. 1224, A. R., 1901.

[1] This statute replaces the acts of February 12 (28 Stat. L., 657) and March 3, 1899 (30 ibid., 1068). For an executive interpretation of this enactment see Circular No. 21, A. G. O., of 1900; for a decision of the Comptroller of July 18, 1900, see Circular 28, A. G. O., 1900.

---

[a] A military attaché is entitled to the same allowance for baggage in changing his station in a foreign country that he would have been entitled to in changing his station in the United States. V Compt. Dec., 55.

[b] The term "baggage," in the military sense, and as used in statutes relating to the Army, embraces almost any article of personal property which does not exceed in weight the limit prescribed by Army Regulations or general orders. 3 Dig. 2d Compt. Dec., 55.

Deduction from mileage.
Ibid.

723. When transportation is furnished by the Quartermaster's Department, or when the established route of travel is over any of the railroads above specified, there shall be deducted from the officers' mileage account, by the paymaster paying the same, three cents per mile for the distance for which transportation has been or should have been furnished.[1] *Ibid.*

Tables of distances.
Ibid.

724. Payment and settlement of mileage accounts of officers shall be made according to distances computed over routes established, and by mileage tables prepared by the Paymaster-General of the Army under the direction of the Secretary of War. *Ibid.*

TRANSPORTATION BY LAND-GRANT AND BOND-AIDED RAILROADS.

Payment of land-grant roads, etc.
Mar. 2, 1901, v. p. 31, 907.

725. For the payment of army transportations lawfully due such land-grant railroads as have not received aid in Government bonds (to be adjusted in accordance with the decisions of the Supreme Court in cases decided under such land-grant acts), but in no case shall more than fifty per centum of full amount of service be paid: *Provided*, That such compensation shall be computed upon the basis of the tariff or lower special rates for like transportation performed for the public at large, and shall be accepted as in full for all demands for such service: *Provided further*, That in expending the money appropriated by this act, a railroad company which has not received aid in bonds of the United States, and which obtained a grant of public land to aid in the construction of its railroad on condition that such railroad should be a post route and military road, subject to the use of the United States for postal, military, naval, and other Government services, and also subject to such regulations as Congress may impose restricting the charge for such Government transportation, having claims against the United States for transportation of troops and munitions of war and military supplies and property over such aided railroads, shall be paid out of the moneys appropriated by the foregoing provision only on the basis of such rate for the transportation of such troops and munitions of war and military supplies and property as the Secretary of War shall deem just and reasonable under the foregoing provision, such rate not to exceed fifty per centum of the compensation for such Government transportation as shall at the time be charged to and paid by private parties to any such company for like and similar transportation; and the amount so fixed to be paid shall be accepted as in full for all demands for such service, * * * dollars.[1] *Act of March 2, 1901 (31 Stat. L., 907).*

---

[1] This statute replaces the acts of February 12 (28 Stat. L., 657) and March 3, 1899 (30 ibid., 1068). For an executive interpretation of this enactment see Circular No. 21, A. G. O., of 1900; for a decision of the Comptroller of July 18, 1900, see Circular 28, A. G. O., 1900.

726. Hereafter all purchases of horses, mules, or oxen, wagons, carts, drays, ships and other seagoing vessels, also all other means of transportation, shall be made by the Quartermaster's Department, by contract, after due legal advertisement, except in cases of extreme emergency. *Act of July 5, 1884 (23 Stat. L., 110).*

Property for Government surveys, National Museum, etc., to be transported.
July 5, 1884, v. 23, p. 110.

727. Hereafter the Quartermaster-General and his officers, under his instructions, wherever stationed, shall receive, transport, and be responsible for all property turned over to them, or any one of them, by the officers or agents of any Government survey, for the National Museum, or for the civil or naval departments of the Government, in Washington or elsewhere, under the regulations governing the transportation of army supplies, the amount paid for such transportation to be refunded or paid by the bureau to which such property or stores pertain.[2] *Act of July 5, 1884 (23 Stat. L., 110).*

PUBLIC ANIMALS; VETERINARIANS.

Par.
728. Draft and pack animals, restriction.
729. Purchases of animals by contract.
730. The same, cavalry and artillery horses.
Par.
731. Draft animals, restriction.
732. The same, cavalry horses.
733. Veterinarians.

Limit to number of draft and pack animals.
Transportation of stores, etc., to be by contract.
July 5, 1884, v. 23, p. 109; Sept. 22, 1888, v. 25, p. 486; Mar. 2, 1901, v. 31, p. 907.

728. The number of draft animals purchased from this appropriation, added to those now on hand, shall be limited to such numbers as are actually required for the service, and all transportation of stores by private parties for the Army shall be done by contract, after due legal advertisement, except in cases of emergency, which must be at once reported to the Secretary of War for his approval. *Acts of July 5, 1884 (23 Stat. L., 109); March 2, 1901 (31 ibid., 907).*

---

[1] The act of February 26, 1900 (31 Stat. L., 214), contained the same requirement.

[2] When a contract provides that upon the arrival of a train the Quartermaster's Department shall examine the stores, and, if found to be in good condition and delivered in proper time, shall so indorse the bill of lading, upon which payment shall be made, it will be presumed that such a certificate was made and given when it appears that the contract was fully performed. Curtis *v.* U. S., 34 Ct. Cls., 5.

Means of transportation to be procured by contract.
July 5, 1884, v. 23, p. 110.

729. Hereafter all purchases of horses, mules, or oxen, wagons, carts, drays, ships and other seagoing vessels, also all other means of transportation, shall be made by the Quartermaster's Department, by contract, after due legal advertisement, except in cases of extreme emergency. *Act of July 5, 1884 (23 Stat. L., 110).*

Cavalry and artillery horses to be procured by contract. Inspection.
July 5, 1884, v. 23, p. 109.

730. Hereafter all purchases of horses, under appropriations for horses for the cavalry and artillery and for the Indian scouts, shall be made by contract, after legal advertisement, by the Quartermaster's Department, under instructions from the Secretary of War, the horses to be inspected under the orders of the general commanding the Army and no horse shall be received and paid for until duly inspected.[1] *Act of July 5, 1884 (23 Stat. L., 109).*

Draft animals. Limit.
Sept. 22, 1888, v. 25, p. 486.

731. Hereafter no part of this appropriation shall be expended in the purchase for the Army of draft animals until the number on hand shall be reduced to five thousand, and hereafter shall only be expended for the purchase of a number sufficient to keep the supply up to five thousand.[2] *Act of September 22, 1888 (25 Stat. L., 486).*

Limit as to number of horses for mounted service.
Feb. 12, 1895, v. 28, p. 660; Mar. 2, 1901, v. 31, p. 906.

732. The number of horses purchased under this appropriation, added to the number on hand, shall be limited to the actual needs of the mounted service; and unless otherwise ordered by the Secretary of War no part of this appropriation shall be paid out for horses not purchased by contract, after competition duly invited by the Quartermaster's Department, and an inspection by such Department, all under the direction and authority of the Secretary of War. *Act of March 2, 1901 (31 Stat. L., 906).*

Veterinarians.
Feb. 2, 1901, s. 20, v. 31, p. 753.

733. Such number of veterinarians as the Secretary of War may authorize shall be employed to attend the animals pertaining to the Quartermaster's or other Departments not directly connected with the cavalry and artillery regiments, at a compensation not exceeding one hundred dollars per month. *Sec. 20, Act of February 2, 1901 (31 Stat. L., 753).*

---

[1] So much of the act of July 5, 1884, as requires these purchases to be reported to the Secretary of War for transmission to Congress was repealed by the act of March 2, 1895 (28 Stat. L., 787).

[2] By the act of June 7, 1898 (30 Stat. L., 433), the operation of this statute was suspended, at the discretion of the Secretary of War, during the period of the existing war; by the act of March 3, 1899 (ibid., 1350), its operation was further suspended, at the discretion of the Secretary of War and subject to the further discretion of Congress, until March 1, 1900; by the act of February 24, 1900 (31 Stat. L., 32), the suspension was extended, under the conditions above set forth, until June 30, 1901.

BARRACKS AND QUARTERS.

Par.
734. Permanent barracks and quarters, construction.
735. Barracks and quarters for seacoast artillery.
736. Quarters for hospital stewards.
737. Restriction on expenditures.
738. Quarters in kind to be furnished to officers.
739. Absent officers, rights of.

Permanent barracks.
Mar. 3, 1859, c. 83, s. 1, v. 11, p. 432.
Sec. 1136, R.S.

734. Permanent barracks or quarters and buildings and structures of a permanent nature shall not be constructed unless detailed estimates shall have been previously submitted to Congress, and approved by a special appropriation for the same, except when constructed by the troops; and no such structures, the cost of which shall exceed twenty thousand dollars, shall be erected unless by special authority of Congress.[1]

Barracks and quarters for seacoast artillery.
June 6, 1900, v. 31, p. 624.

735. For the erection of barracks and quarters for artillery in connection with the project adopted for seacoast defense there shall not hereafter be expended at any one point more than one thousand two hundred dollars per man for each man required for one relief to man the guns at the post up to eighty-three men, the present permanent strength of a battery, enlisted and commissioned, and for each man required beyond this number six hundred dollars per man, from any appropriation made by Congress, unless special authority of Congress be granted for a greater expenditure.[2] *Act of June 6, 1900 (31 Stat. L., 624).*

Quarters for hospital stewards.
Feb. 27, 1893, v. 27, p. 484.

736. Hereafter the posts at which such quarters [for hospital stewards], shall be constructed shall be designated by the Secretary of War, and such quarters shall be built by contract, after legal advertisement, whenever the same is practicable. *Act of February 27, 1893 (27 Stat. L., 484).*

Limit on expenditures.

Approval of Secretary of War in cases of improvements exceeding, etc.
Feb. 27, 1893, v. 27, p. 484.

737. Hereafter no expenditures exceeding five hundred dollars shall be made upon any building or military post, or grounds about the same, without the approval of the Secretary of War for the same, upon detailed estimates of the Quartermaster's Department, and the erection, construction, and repairs of all buildings and other public structures in the Quartermaster's Department shall, so far as may be practicable, be made by contract, after due legal advertisement.[1] *Act of February 27, 1893 (27 Stat. L., 484).*

---

[1] The Quartermaster's Department alone is charged with the duty and responsibility of erecting quarters. Travers *v.* U. S., 5 Ct. Cls., 329.

[2] This enactment replaces the requirement of the act of July 1, 1898 (30 Stat. L., 629), which restricted expenditures on artillery posts for seacoast defense to $60,000 for a one-battery post and $20,000 additional for each additional battery.

Quarters in kind to be furnished to officers.
Sec. 9, June 17, 1878, v. 20, p. 144.

738. At all posts and stations where there are public quarters belonging to the United States, officers may be furnished with quarters in kind in such public quarters, and not elsewhere, by the Quartermaster's Department, assigning to the officers of each grade, respectively, such number of rooms[2] as is now allowed to such grade by the rules and regulations of the Army.[3] *Sec. 9, act of June 17, 1878 (20 Stat. L., 144).*

---

[1] This requirement has appeared in the several acts of appropriation since that of 1884.

[2] For rules respecting the allowance and assignment of quarters at military posts, see paragraphs 1088–1100 Army Regulations of 1901.

LOCKERS.

The Quartermaster's Department will provide in all permanent barracks a box locker for each enlisted man for his uniform and extra clothing. Each man will provide his own lock. Par. 1085, ibid.

[3] The following table shows the number of rooms, the quantity of fuel, and the allowance of cooking and heating stoves to be supplied for the use of officers and men in quarters and barracks:

	Rooms.			Cords of wood per month.		Increased allowance from September to April, both inclusive.		For quarters.		For office.
	As quarters.	As kitchen.	As office.	From May 1 to Aug. 31.	From Sept. 1 to Apr. 30.	Between 36th and 43d deg. N. latitude, one-fourth.	North of 43d deg., one-third.	Heating stoves.	Cooking stoves or ranges.	Heating stoves.
A lieutenant-general or major-general	5	1	...	1	5	1¼	1⅔	5	1	....
A brigadier-general or colonel	4	1	...	1	4	1	1⅓	4	1	....
A lieutenant-colonel or major	3	1	...	1	3½	⅞	1⅙	3	1	....
A captain or chaplain	2	1	...	¾	3	¾	1	2	1	....
A lieutenant	1	1	...	½	2	½	⅔	1	1	....
The Commanding General of the Army	...	...	3	....	3	¾	1	...	...	3
The commanding officer of a territorial department	...	...	2	....	2	½	⅔	...	...	2
The aids to the commanding officer of a territorial department	...	...	1	....	1	¼	⅓	...	...	1
An assistant or deputy quartermaster-general, an assistant commissary-general of subsistence, an assistant surgeon-general, the assistant and deputy paymaster-general, and the chief quartermaster and chief commissary at the headquarters of a territorial department, each	...	...	2	....	2	½	⅔	...	...	2
The commanding officer of a regiment or post, or paymaster, quartermaster, assistant quartermaster, commissary, and military storekeeper, each	...	...	1	....	1	¼	⅓	...	...	1
An assistant adjutant-general, an inspector-general, an acting inspector-general, an engineer officer, (a) an ordnance officer, (a) a signal officer, a judge-advocate or an acting judge-advocate, and the senior medical officer, when stationed on duty as any place not in the field, (a) each	...	...	1	....	1	¼	⅓	...	...	1

[a] Except at Military Academy.

739. Hereafter officers temporarily absent on duty in the field shall not lose their right to quarters, or commutation thereof, at their permanent station while so temporarily absent. *Act of February 27, 1893 (27 Stat. L., 478).*

Officers temporarily absent in the field not to lose right to quarters.
Feb. 27, 1893, v. 27, p. 478.

[Footnote 3—Continued.]

	Rooms.			Cords of wood per month.		Increased allowance from September to April, both inclusive.		For quarters.		For office.
	As quarters.	As kitchen.	As office.	From May 1 to Aug. 31.	From Sept. 1 to Apr. 30.	Between 36th and 43d deg. N. latitude, one-fourth.	North of 43d deg., one third.	Heating stoves.	Cooking stoves or ranges.	Heating stoves.
An acting assistant quartermaster, an acting commissary of subsistence, an adjutant, when approved by the Quartermaster-General, each	...	...	1	....	1	¼	⅓	...	...	1
A sergeant-major, quartermaster-sergeant, sergeant of the post noncommissioned staff, hospital steward, veterinary surgeon, signal sergeant; (a) a regimental, squadron, and battalion sergeant-major, quartermaster-sergeant, sergeant of the post noncommissioned staff, hospital steward, and chief musician and enlisted men of the signal corps, when employed as signal sergeants, each	1	...	...	⅓	1	¼	⅓	1	...	....
Superintendent national cemetery	...	...	...	⅓	1	¼	⅓	...	1	....
Each noncommissioned officer, musician, private, and hospital matron	...	...	...	1/12	⅙	1/24	1/18	...	...	....
Each necessary fire for the sick in hospital, each dispensary and hospital mess room, at a military post or station, to be regulated by the surgeon and commanding officer, not exceeding	...	...	...	½	2	½	⅔	1	...	....
For general hospitals, when necessary, not exceeding, for each bed	...	...	...	1/12	⅙	1/24	1/18	...	...	....
Each guard fire, to be regulated by the commanding officer, not exceeding	...	...	...	....	3	¾	1	1	...	....
Each necessary fire for military courts or boards, at a rate not exceeding	...	...	...	....	2	½	⅔	1	...	....
Storehouse of commissary and quartermaster, when necessary, not exceeding for each	...	...	...	....	1	¼	⅓	1	...	....
Each employee of the Quartermaster's, Subsistence, or Medical Department to whom subsistence in kind is issued by the Government	...	...	...	1/12	⅙	1/24	1/18	...	...	....
For library, reading room, schoolroom, chapel, and gymnasium, 1 heating stove for each, and when the garrison exceeds 150 enlisted men, 2 heating stoves, and such quantity of fuel for the same as may be certified to as necessary by the officers in charge and approved by the commanding officer	...	...	...	....	....	......	......	...	...	....
For a company: 2 large stoves in dormitory, 1 large stove in each mess room and day room, 1 small stove for each of the two rooms for noncommissioned officers, 1 small stove for the library, and 1 cooking stove or range sufficient to cook its food	...	...	...	....	....	......	......	...	...	....
Each hospital kitchen	...	...	...	....	....	......	......	...	1	....
For each authorized room as quarters for civilian employees	...	...	...	....	....	......	......	1	...	....
For each six civilian employees to whom fuel is allowed	...	...	...	....	....	......	......	1	...	....
For mess of civilian employees	...	...	...	....	....	......	......	...	1	....
For telegraph office	...	...	...	....	....	......	......	1	...	....
For each blacksmith, carpenter, and saddler shop	...	...	...	....	....	......	......	1	...	....

[a] Except when serving in a detachment.

Par. 1006, A. R., 1895.

FUEL AND FORAGE.

Allowance of fuel and forage. Sec. 8, June 17, 1878, v. 20, p. 150.

740. Allowance of or commutation for fuel to commissioned officers is hereby prohibited; but fuel may be furnished to the officers of the Army by the Quartermaster's Department, for the actual use of such officers only, at the rate of three dollars per cord for standard oak wood, or at an equivalent rate for other kinds of fuel, according to the regulations now in existence; and forage in kind may be furnished to the officers of the Army by the Quartermaster's Department, only for horses owned and actually kept by such officers in the performance of their official military duties when on duty with troops in the field or at such military posts west of the Mississippi River, as may be from time to time designated by the Secretary of War, and not otherwise as follows:

To the General, five horses;
To the Lieutenant-General, four horses;
To a major-general, three horses;
To a brigadier-general, three horses;
To a colonel, two horses;
To a lieutenant-colonel, two horses;
To a major, two horses;
To a captain (mounted), two horses;
To a lieutenant (mounted), two horses;
To an adjutant, two horses;
To a regimental quartermaster, two horses.[1] *Sec. 8, act of June 17, 1878 (20 Stat. L., 150).*

No discrimination to officers serving east of Mississippi River. Feb. 24, 1881, v. 21, p. 347.

741. There shall be no discrimination in the issue of forage against officers serving east of the Mississippi River, provided they are required by law to be mounted, and actually keep and own their animals. *Act of February 24, 1881 (21 Stat. L., 347).*

---

[1] This statute, which replaces section 1271, Revised Statutes, contains the added condition that horses shall not only be "actually kept" but "owned" by officers in the performance of their military duties.

The right conferred upon officers of the Army by the act of June 18, 1878 (20 Stat. L., 150), to purchase fuel for their actual use only, in the manner and at the terms prescribed by said act, pertains to all officers of the Army, irrespective of the nature of the duties upon which they are engaged. No part of the cost of fuel so sold is properly chargeable to the appropriation for any public work, unless provision is expressly made therein for such cost. 3 Dig. 2d Compt. Dec., par. 655. For allowances of fuel as established by regulation, see table in note 5 to par. 738, *ante.*

The forage ration for a horse is 14 pounds of hay and 12 pounds of oats, corn, or barley; for a mule, 14 pounds of hay and 9 pounds of oats, corn, or barley. Department commanders will reduce the forage ration when necessary. Par. 1154, A. R., 1901.

One hundred pounds of straw per month is allowed for bedding to each horse or mule in public service. At posts where straw is not furnished, hay will be issued and used for bedding. Par. 1162, ibid.

Forage is furnished only to officers for the horses owned and actually kept by them

WORKING PARTIES AND EXTRA-DUTY PAY.[1]

Par.
742. Rates.
743. Details to be in writing.
744. The same, by whom made.

Par.
745. Rates of pay.
746. Restriction in time of war.
747. The same in insular possessions.

742. When soldiers are detailed for employment as artificers or laborers in the construction of permanent military works, public roads, or other constant labor of not less than ten days' duration, they shall receive, in addition to their regular pay, the following compensation: [Fifty cents per day for mechanics, artisans, school-teachers, and thirty-five cents per day for other clerks, teamsters, laborers, and others.] This allowance of extra pay shall not apply to the troops of the Ordnance Department.

Extra duty; rates of pay. July 13, 1866, c. 176, s. 7, v. 14, p. 93; Feb. 1, 1873, c. 88, v. 17, p. 422; Mar. 3, 1885, v. 23, p. 356. July 5, 1884, v. 23, p. 110. Sec. 1287, R. S.

---

in the performance of their official duties when serving with troops in the field or at military posts and stations and for the following number: To a lieutenant-general, four, to a major-general or a brigadier-general, three; to a colonel, lieutenant-colonel, major, captain, or lieutenant, mounted, and regimental adjutant and quartermaster, each two. Par. 1157, ibid.

Mounted officers will not use public horses and at the same time draw forage for those they own; nor will they use public animals except as authorized by regulations. Should circumstances render it necessary, an officer may be temporarily furnished public horses, but during such period he will not be permitted to draw forage for a private horse. Par. 1158, ibid.

An officer not mounted may purchase forage for two horses kept for his own use, for which he will be charged cost, including transportation. The sale of forage to mounted officers is forbidden. Par. 1159, ibid.

For a case, in which certain officers of the Army were ordered by the Secretary of War to make restitution to the United States of certain sums of money representing quantities of fuel which had been consumed by them without being paid for as required by law, see Gen. Court-martial Orders No. 85, War Dept., of 1882.

[1] WORKING PARTIES—EXTRA AND SPECIAL DUTY MEN.

Troops will not be employed in labors that interfere with their military duties except in cases of necessity. Par. 181, A. R., 1901.

Enlisted men detailed to perform specific services which remove them temporarily from the ordinary duty roster of the organization to which they belong will be reported on extra duty if receiving increased compensation therefor, otherwise, on special duty. They will not be placed on extra duty, except as bakers or to perform the necessary routine services in the Quartermaster's and Subsistence Departments, without the sanction of the department commander, nor will they be employed on extra duty for labor in camp or garrison which can be properly performed by fatigue parties. Allotments of funds for the payment of extra-duty men at department headquarters and depots under the control of department commanders will be made only with the approval of the Secretary of War. Duty of a military character must be performed without extra compensation. Par. 164, A. R., 1895.

The provisions of section 6 of the act approved April 26, 1898, abolishing extra-duty pay in time of war, applies to enlisted men in every department of the Army, and, as war existed when the act was passed, enlisted men ceased to be entitled to extra-duty pay upon the date of its approval. Circular 15, A. G. O., 1898. See, also, G. O. 77, A. G. O., 1898.

The detail of a noncommissioned officer on extra duty other than that of overseer will not be made without the approval of the Secretary of War. A noncommissioned officer will not be detailed on any duty inconsistent with his rank and position in the military service. Par. 166, A. R., 1895.

Company artificers, farriers, blacksmiths, saddlers, and wagoners will not receive extra-duty pay unless detailed on extra duty in the Quartermaster's Department, wholly disconnected from their companies. Par. 186, A. R., 1901.

Soldiers on extra duty will be paid the extra rates of pay allowed by law for the

Details to be in writing. July 13, 1866, c. 176, s. 7, v. 14, p. 93. Sec. 1235, R. S.

743. Working parties of soldiers shall be detailed for employment as artificers or laborers, in the construction of permanent military works or public roads, or in other constant labor only upon the written order of a commanding officer, when such detail is for ten or more days.

Details in the field; how made. Mar. 3, 1863, c. 75, s. 35, v. 12, p. 736. Sec. 1236, R. S.

744. Details to special service from forces in the field shall be made only with the consent of the commanding officer of the forces.

Rates of extra-duty pay. July 5, 1884, v. 23, p. 110.

745. Extra-duty pay hereafter shall be at the rate of fifty cents per day for mechanics, artisans, school-teachers, and clerks at Army, division, and department headquarters, and thirty-five cents per day for other clerks, teamsters, laborers, and others.[1] *Act of July 5, 1884* (*23 Stat. L., 110.*)

Limitation in time of war. S. 6, Apr. 26, 1898, v. 30, p. 365.

746. In war time no additional increased compensation shall be allowed to soldiers performing what is known as extra or special duty. *Sec. 6, act of April 26, 1898* (*30 Stat. L., 365*).

The same. May 26, 1900, v. 31, p. 211.

747. Enlisted men receiving or entitled to the twenty per centum increased pay herein authorized shall not be entitled to or receive any additional increased compensation for what is known as extra or special duty. *Act of May 26, 1900* (*31 Stat L., 211*).

---

duty performed and for the exact number of days employed; and no greater number of men will be emyloyed on extra duty at any time than can be paid the full legal rates for the time employed from the funds provided. Payments made in violation of the above rules will be charged against the officers who ordered the details. Par. 187, ibid.

Extra-duty men will be held to such hours of labor as may be expedient and necessary; but, except in case of urgent public necessity, as in military operations, eight hours will be considered a day's work. For all hours employed beyond that number the soldier will receive additional compensation—the extra hours being computed as fractions of a day of eight hours' duration. Par. 189, ibid.

Details of enlisted men for extra and special duty will be limited to actual necessities, which will be determined by post commanders in accordance with limits published in orders from the War Department. Allotments to posts of funds for extra-duty pay are made by department commanders from allotments made to departments for the purpose, and must not be exceeded without special authority from department commanders. Par. 190, ibid.

[1] Enlisted men of the several staff departments are not entitled to extra-duty pay for services rendered in the department to which they belong. To entitle them to such compensation they must be detailed by competent orders and must have performed duty in another department than that in which they are enlisted. Under existing orders enlisted men of the Ordnance Department are entitled to extra-duty pay when performing duty in the Quartermaster's Department. Circular II, A. G. O., 1886; I, ibid, 1887, and par. 185, A. R., 1901.

Clerical services at Army, division, and department headquarters have, since the act of July 29, 1886 (24 Stat. L., 167), been performed by a corps of general-service clerks and messengers. By the act of August 6, 1894, this force ceased to exist as a part of the enlisted strength of the Army.

The act of March 15, 1898 (30 Stat. L., 323), and prior acts of appropriation fix the sum that may be expended for the pay of extra-duty men at $200,000 per annum; they also contain the requirement that "no payment of extra-duty pay shall be made at any greater rate per day than is fixed by law for the class of persons employed and the work done therein."

CIVILIAN EMPLOYEES.

Restriction on employment.
Mar. 2, 1901, v. 31, p. 906.

748. The number of and total sum paid for civilian employees in the Quartermaster's Department, including those paid from the funds appropriated for regular supplies, incidental expenses, barracks and quarters, army transportation, clothing, camp and garrison equipage, shall be limited to the actual requirements of the service, and no employee paid therefrom shall receive a salary of more than one hundred and fifty dollars per month, except upon the approval of the Secretary of War.[1] *Act of March 2, 1901 (31 Stat. L., 906).*

CLOTHING.

Par.
749. President to prescribe.
750. Gratuitous issues.
751. Returns and accounts.
752. Clothing allowances.
753. Clothing balances.
Par.
754. Uniforms not to be sold.
755. Selling, spoiling, etc., clothing.
756. Altering clothing.
757. Restriction, cost of altering.

Uniform to be prescribed by the President.
Apr. 24, 1816, c. 69, s. 7, v. 3, p. 298.
Sec. 1296, R. S.

749. The President may prescribe the uniform of the Army and quantity and kind of clothing which shall be issued annually to the troops of the United States.

Gratuitous issues.
Mar. 12, 1868, res. 19, v. 15, p. 250.
Sec. 1298, R. S.

750. The Secretary of War may, on the recommendation of the Surgeon-General, order gratuitous issues of clothing to soldiers who have had contagious diseases, and to hospital attendants who have nursed them, to replace any articles of their clothing destroyed by order of the proper medical officers to prevent contagion.[2]

---

[1] The act of March 3, 1885 (23 Stat. L., 359), restricted the number of civilian employees in this Department to 1,000; the act of February 12, 1895 (28 ibid., 661), restricted the payments for the services of civilian employees to $1,000,000, and provided that no employee should receive as salary more than $150 per month without the specific authority of law.

The amount to be expended for the payment of civilian employees was fixed at $1,600,000 by the act of March 3, 1883 (22 Stat. L., 459); at $1,500,000 by the acts of July 5, 1884 (23 Stat. L., 111), March 3, 1885 (23 Stat. L., 360), and June 30, 1886 (24 Stat. L., 98); at $1,300,000 by the acts of February 9, 1887 (24 Stat. L., 399), September 22, 1888 (25 Stat. L., 486), March 2, 1889 (25 Stat. L., 830), June 13, 1890 (26 Stat. L., 154), and February 24, 1891 (26 Stat. L., 776); at $1,200,000 by the acts of July 16, 1892 (27 Stat. L., 180), and February 27, 1893 (27 Stat. L., 484); at $1,100,000 by the act of August 6, 1894 (28 Stat. L., 240), and at $1,000,000 by the acts of February 12, 1895 (28 Stat. L., 661), March 16, 1896 (29 Stat. L., 66), March 2, 1897 (ibid., 614), and March 15, 1898 (30 ibid., 323); by the acts of June 7, 1898, (30 ibid., 433), March 3, 1899 (ibid., 1350), and February 24, 1900 (31 ibid., 32), the restrictions imposed in the statutes above referred to were suspended, in the discretion of the Secretary of War or subject to the further order of Congress, until June 30, 1901.

[2] GRATUITOUS ISSUES.

Gratuitous issues of clothing may be made, under the provisions of section 1298, Revised Statutes, to replace articles destroyed to prevent the spread of contagious diseases. Par. 1319, A. R., 1901.

Should it become necessary to issue new clothing for use in the burial of a deceased

ACCOUNTABILITY FOR CLOTHING.

Returns of clothing and equipage.
May 18, 1826, c. 74, s. 2, v. 4, p. 174; Feb. 27, 1877, v. 69, p. 243; Mar. 29, 1894, v. 28, p. 47.
Sec. 1221, R. S.

751. Every officer who receives clothing or camp equipage for the use of his command, or for issue to the troops, shall render to the Quartermaster-General, at the expiration of each regular quarter of the year, quarterly returns of such supplies, according to the forms which may be prescribed, accompanied by the requisite vouchers for any issues which shall have been made.[1]

Clothing allowances.
Apr. 24, 1816, c. 69, ss. 7, 8, v. 4, p. 298; May 15, 1872, c. 161, s. 3, v. 17, p. 117.
Sec. 1302, R. S.

752. The money value of all clothing overdrawn by the soldier beyond his allowance shall be charged against him, every six months, on the muster roll of his company, or on his final statements if sooner discharged, and he shall receive pay for such articles of clothing as have not been issued to him in any year, or which may be due to him at the time of his discharge, according to the annual estimated value thereof. The amount due him for clothing, when he draws less than his allowance, shall not be paid to him until his final discharge from the service.[1]

---

soldier, as in the case of a man who dies away from his proper command and under circumstances rendering such issues imperatively necessary, the expense of the issue will be borne by the United States, and the clothing will be dropped from the returns of the issuing officer on the orders of the commanding officer, which must recite the necessity for the issue. Par. 1320, ibid.

Where the clothing of certain enlisted men of volunteers was destroyed near Santiago, Cuba, in 1898, by order of the proper military authority, on account of having been exposed to contagion, and replaced by new clothing which was charged to the enlisted men receiving it on their clothing accounts, it was decided by the Comptroller of the Treasury, November 28, 1900, that the issue was proper under the circumstances of the case, and that the charges therefor in the clothing accounts were erroneous and should be canceled. Circular No. 51, A. G. O., 1900.

[1] A table showing the price of clothing and equipage for the Army, the allowance of clothing in kind to each soldier for each year of his enlistment, and his clothing money allowance for each year and day thereof, also the allowance of equipage to officers and enlisted men, will be published in orders. Par. 1286, A. R., 1901.

Each soldier's clothing account will be kept by the company or detachment commander in the company clothing book. The account will show the money value of the clothing received by the soldier at each issue, and his receipt therefor will be taken in the book. Par. 1303, ibid.

Company and detachment commanders will settle the clothing account of every enlisted man of their respective commands six months after the date of his enlistment, and thereafter on June 30 and December 31 of each year. The entire amount found due the United States for the periods embracing the dates of settlement will be charged to the soldier upon the pay rolls. The money allowance of clothing for the first year will be allotted by half years. Par. 1304, ibid.

The balance due the soldier at either of these dates will be credited to him upon the company clothing book. It will not be placed upon the pay rolls, but the final balance due at date of discharge will be entered upon his final statements. In case of transfer the balance due the soldier or the United States will be entered on the descriptive list. All balances of this character will be stated in words and figures. Par. 1305, ibid.

The clothing account of a soldier who deserts should be settled in full to the date of desertion. The balance due him or the United States will be entered on the next pay rolls after date of desertion. The amount due the United States or the soldier at date of desertion should be ascertained by crediting the soldier with clothing allowance from date of last clothing settlement to the date of desertion (excluding the day of desertion) and debiting him with the money value of all cloth-

753. The amounts of deposits and clothing balances accumulating to the soldier's credit under sections thirteen hundred and two and thirteen hundred and five shall, when payable to him upon his discharge, be paid out of the appropriations for "pay of the Army" for the then current fiscal year. Sergeants of ordnance shall receive the same allowance of clothing as other sergeants in like staff departments. *Act of July 16, 1892 (27 Stat. L., 174).*

Clothing balances payable at discharge.
May 15 1872, c. 61, s 5, v. 17, p. 117.
Sec. 1308, R. S.

Sergeants of ordnance.
July 16, 1892, v. 27 p. 174.

754. The clothes, arms, military outfits, and accouterments furnished by the United States to any soldier shall not be sold, bartered, exchanged, pledged, loaned, or given away; and no person not a soldier, or duly authorized officer of the United States, who has possession of any such clothes, arms, military outfits, or accouterments, so furnished, and which have been the subjects of any such sale, barter, exchange, pledge, loan, or gift, shall have any right, title, or interest therein; but the same may be seized and taken wherever found by any officer of the United States, civil or military, and shall thereupon be delivered to any quartermaster, or other officer authorized to receive the same. The possession of any such clothes, arms, military outfits, or accouterments by any person not a soldier or officer of the United States shall be presumptive evidence of such a sale, barter, exchange, pledge, loan, or gift.

Uniforms and equipments not to be sold, bartered, exchanged, loaned, etc.
Mar. 3, 1863, c. 75, s. 23, v. 12, p. 735.
Sec. 3748, R.S.

755. Any soldier who sells or through neglect loses or spoils his horse, arms, clothing, or accouterments shall be punished as a court-martial may adjudge, subject to such limitation as may be prescribed by the President by virtue of the power vested in him. *Seventeenth article of war.*

Selling or spoiling clothing, etc.: penalty.
July 27, 1892, v. 27, p. 277.
17 Art. War.

ALTERING CLOTHING.

756. It shall be lawful for the commanding officer of each regiment, whenever it may be necessary, to cause the coats, vests, and overalls or breeches which may from time to time be issued to and for his regiment to be altered and

Altering clothing.
Feb. 27, 1877, c. 69, v. 19, p. 243.
Sec. 1220, R.S.

---

ing drawn by him; the difference between the two amounts will be the amount due the United States or the soldier. Par. 1306, ibid.

A deserter is entitled to clothing allowance from the date he surrenders or is apprehended, and the amount due him will be computed from the tables then and subsequently in force. A new clothing account will be opened without reference to his account at date of desertion. Par. 1307, ibid.

Clothing allowance accruing to a soldier after return to the service from desertion will not be used to reduce the amount of the soldier's indebtedness at date of desertion; the full amount of the soldier's indebtedness must be charged on the roll, to be deducted by the paymaster when he settles the soldier's account. Par. 1309, ibid.

Section 1297, Revised Statutes, forbidding the allowance of clothing to ordnance-sergeants, was repealed by the act of July 14, 1892. 27 Stat. L., 578.

new made, so as to better to fit them to the persons respectively for whose use they shall be delivered; and for defraying the expense of such alterations, to cause to be deducted and applied out of the pay of such persons a sum or sums not exceeding twenty-five cents for each coat, eight cents for each vest and for each pair of overalls or breeches.

Limit of cost. Mar. 2, 1889, v. 25, 831.

759. Hereafter the regimental price fixed for altering and fitting soldiers' clothing shall not exceed the cost of making the same at the clothing depots.[1] *Act of March 2, 1889 (25 Stat. L., 831).*

Historical note.—The office of Quartermaster-General was created during the war of the Revolution by a resolution of Congress of June 16, 1775; by a subsequent resolution dated July 19, 1775, the appointment to the vacancy was vested in General Washington, and by a resolution of December 22, 1775, the rank of colonel was attached to the office. The appointment was conferred upon Thomas Mifflin, of Pennsylvania, who continued to exercise its functions until August 5, 1780, save for the period between June 5 and October 1, 1776, when the office was held by Col. Thomas Moylan. Upon the resignation of General Mifflin he was succeeded by Gen. Nathaniel Greene, who was appointed to another command on August 5, 1780, and was succeeded by Col. Timothy Pickering, who continued to perform the duties of the office until the close of the war. On July 25, 1785, the office expired by statutory limitation. After the close of active military operations in 1781 the practice of supplying the troops by a system of contracts which had been resorted to during the war, and had been approved by a resolution of Congress dated October 2, 1778, was resumed and continued to exist until its failure as an efficient method of supply was demonstrated during the war of 1812.

The office of quartermaster was established by sections 5 and 6 of the act of March 3, 1791 (1 Stat. L., 222); the incumbent of this office was designated as Quartermaster-General, and the rank of lieutenant-colonel was conferred by sections 10 and 11 of the act of March 3, 1795 (ibid., 431), and the office as thus established was continued in the acts to ascertain and fix the military establishment, approved May 30, 1796 (ibid., 483), and March 3, 1797 (ibid., 507). The provisional establishment authorized in contemplation of war with France by the acts of May 28, 1798 (ibid., 558), and March 3, 1799 (ibid., 740), made provision for a Quartermaster-General, with the rank of major-general, with deputy quartermasters-general for armies and quarter masters for divisions, who were to be selected from the line. Operations looking to an increase of the Army were suspended by the acts of February 20, 1800 (2 Stat. L., 7), and May 14, 1800 (ibid., 85). The duties hitherto performed by the Quartermaster's Department were, by section 3 of the act of March 16, 1802 (ibid., 133), devolved upon the Paymaster-General, and upon the military agents and assistant military agents authorized by that enactment, and this arrangement continued until the establishment of the Quartermaster's Department in 1808.

The procurement of supplies for the military establishment during the period immediately following the organization of the Government under the Constitution was regulated by section 5 of the act of May 8, 1792 (1 Stat. L., 280), which contained the requirement that "all purchases and contracts for supplying the Army with provisions, clothing, supplies in the Quartermaster's Department, military stores, Indian goods, and all other supplies or articles for the use of the Department of War be made by or under the direction of the Treasury Department." The office of purveyor of public supplies in the Treasury Department was created by the act of February 23, 1795 (ibid., 419), and this officer was to perform the duties, in connection with contracts and purchases, which had been prescribed in the act of May 8, 1792. The power to make purchases for the military establishment, by contract or otherwise, was vested in the Secretary of War by section 3 of the act of July 16, 1798

---

[1] LAUNDRY WORK FOR RECRUITS AT DEPOTS.

The Quartermaster's Department is authorized to pay from the appropriation for clothing and equipage a sum not exceeding $1.50 for the laundry work of each recruit at rendezvous and stations who has no funds of his own. The expenditure will be charged on the clothing account of the recruit and so noted on his descriptive and assignment card. Par. 1316, A. R., 1901.

(ibid., 610); and by section 6 of the same enactment, the corresponding power was withdrawn from the purveyor of public supplies, the purpose of the statute being to vest the power of purchase in the Secretary of War and that of auditing the vouchers of purchase in the accounting officers of the Treasury. By the act of March 3, 1809 (2 ibid., 535), a method of making purchases and of accounting for the same was prescribed by statute.

The Quartermaster's Department, *eo nomine*, was established by the act of March 28, 1812 (2 Stat. L., 690), and consisted of a Quartermaster-General with the rank of brigadier-general, four deputy quartermasters, and as many assistant deputy quartermasters as, in the opinion of the President, the public service might require; in section 3 the duties of the department were defined. A commissary-general of purchases was also authorized, and a purchasing department was established, to consist of a commissary-general of purchases, a deputy for each division, six assistant commissaries of issues, and as many military storekeepers as the service might require. The duties of the purchasing department, which were to some extent in conflict with those prescribed for the Quartermaster's Department, appear to have been restricted to the procurement of subsistence stores and supplies, leaving the purchase of forage, the provision of transportation, etc., to the Quartermaster-General. The act of April 23, 1812 (ibid., 710), established a corps of artificers as a component part of the Quartermaster's Department; and by the act of May 22, 1812 (ibid., 742), a force of barrack masters was authorized, and officers of the department were required to give bond for the faithful expenditure of public moneys and accounting for all public property which might come into their hands. The office of superintendent-general of military supplies was created by the act of March 3, 1813 (ibid., 816), and charged with the duty of supervising the rendition and audit of accounts and returns from officers in the military service; this office was abolished by the act of March 3, 1817 (3 ibid., 366), the duties of audit being transferred to the accounting officers of the Treasury.

In the reorganization of the staff, which was accomplished by the act of April 24, 1816 (3 Stat. L., 297), the services of the Quartermaster-General were retained and a deputy quartermaster-general was authorized for each division and an assistant for each brigade, who were to supersede the existing quartermasters of brigades. By section 3 of the act of April 14, 1818 (ibid., 426), the department was to consist of a Quartermaster-General (brigadier-general), four assistant deputy quartermasters-general, and as many additional assistants as the President might deem proper. At the general reduction of 1821 the strength of the department was fixed at a Quartermaster-General (brigadier-general), two quartermasters (majors of cavalry), and ten assistant quartermasters, to be detailed from the line with $10 per month additional compensation. By section 4 of the act of May 18, 1826 (4 ibid., 173), two quartermasters and ten assistants were added, who were also to be taken from the line. This statute imposed upon the department the duty of distributing (but not purchasing) the clothing, camp and garrison equipage required for the use of the troops. By section 9 of the act of July 5, 1838 (5 ibid., 256), two assistant quartermasters-general (lieutenant-colonels), and eight assistant quartermasters (captains) were added, and officers already in the department were placed on the same footing in respect to rank, pay, and emoluments (that of officers of dragoons of corresponding rank) as those therein authorized; forage and wagon masters, not to exceed twenty in all, were also authorized. The office of commissary-general of purchases was abolished by section 3, act of August 23, 1842 (5 ibid., 512), and its duties were merged in those required to be performed by the Quartermaster's Department.

At the outbreak of the war with Mexico provision was made for the expansion of the department in section 5, act of June 18, 1846 (9 Stat. L., 17), by the appointment of a quartermaster (major) for each brigade and an assistant quartermaster (captain) for each regiment. By section 10, act of February 11, 1847 (ibid., 126), four quartermasters and ten assistant quartermasters were added to the department; by section 10, act of July 19, 1848 (ibid., 247), so much of the act of February 11, 1847, as required the discharge of the additional officers therein authorized was repealed. Five military storekeepers were added by the act of March 3, 1857 (11 ibid., 200).

For the volunteer forces called into the service at the commencement of the war of the rebellion, brigade quartermasters (captains) were authorized for each brigade, and the permanent force of the department was increased by the addition of one colonel, two lieutenant-colonels, four majors, and twenty captains by section 3 of the act of August 3, 1861 (12 Stat. L., 287); captains after fourteen years' service were to be advanced to the grade of major, and wagon masters and teamsters were authorized with the pay and allowances of sergeants and corporals, respectively. The number of military storekeepers was increased to twelve by section 8 of the act of 1862 (ibid., 509). The office of the Quartermaster-General was reorganized into eight divisions, and six inspectors and ten chief quartermasters of armies and departments (colonels) and division quartermasters with the rank of major were authorized for the period of the war.

At the general reorganization of 1866, the strength of the department was increased to the following: One Quartermaster-General (brigadier-general), six assistant quartermasters-general (colonels), ten deputy quartermasters-general (lieutenant-colonels), fifteen quartermasters (majors), and forty-four assistant quartermasters (captains), section 13, act of July 28, 1866 (14 Stat. L., 334). The vacancies created by the act were to be filled by the appointment of persons who had served in the Quartermaster's Department during the war of the rebellion; so soon as the vacancies created by the act had been once filled, however, there were to be no appointments or promotions to the grades of captain and major until the number of officers in those grades had been reduced to twelve and thirty respectively. Promotions and appointments were prohibited until the further order of Congress by section 6, act of March 3, 1869 (15 Stat. L., 318, sec. 1194, R. S.), but this prohibition was removed by the act of March 3, 1875 (18 ibid., 330), which provided the following permanent organization for the department: One Quartermaster-General (brigadier-general), four assistant quartermasters-general (colonels), eight deputy quartermasters-general (lieutenant-colonels), fourteen quartermasters (majors), and thirty assistant quartermasters (captains); no more military storekeepers were to be appointed, and the office was eventually to cease to exist upon the death or retirement of the storekeepers then in service. Appointments to the grade of captain from civil life were authorized, in the discretion of the President, by the act of March 3, 1883 (22 ibid., 456), but this requirement was repealed by the act of August 6, 1894 (28 ibid., 234), which restricted such appointments to officers of the next lower grade in the line of the Army. The corps of quartermaster-sergeants was added by the act of July 5, 1884 (23 ibid., 107), and the corps of army service men was attached to the department by the act of June 20, 1890 (26 ibid., 163). At the outbreak of the war with Spain the Secretary of War was authorized, by the act of July 7, 1898 (30 ibid., 714), to assign four officers of the department to duty as inspectors, and these officers, together with the four principal assistants in the office of the Quartermaster-General, the heads of the divisions in the same office, and the officers in charge of the principal depots, not exceeding twelve in number, were to have, during such assignment, the rank and pay one grade higher than that actually held by them in the regular or volunteer service; such increase in rank, however, was in no case to exceed that of colonel, and was to continue for a period not exceeding one year after the close of the war. Two colonels, two lieutenant-colonels, three majors, and twenty captains were added to the volunteer force of the department for the period of the existing war. The corps of post quartermaster-sergeants was increased to a total strength of one hundred and five by the act of July 8, 1898 (ibid., 728).

By section 16 of the act of February 2, 1901 (31 Stat. L. 751), the permanent strength of the department was fixed at one Quartermaster-General with the rank of brigadier-general, six assistant quartermasters-general with the rank of colonel, nine deputy quartermasters-general with the rank of lieutenant-colonel, twenty quartermasters with the rank of major, and sixty quartermasters with the rank of captain mounted. A system of details was also established by the operation of which the permanent commissioned personnel of the department will be gradually replaced, as vacancies occur, by officers detailed from the line of the Army for duty in the Quartermaster's Department.

CHAPTER XIX.

THE SUBSISTENCE DEPARTMENT.[1]

Par.
758. Organization.
759–761. Appointments, promotions, details.
762. Post commissary-sergeants.
763–768. Duties; purchases.
769–777. The ration; issues of rations.
Par.
778–784. Sales to officers and enlisted men.
785-787. Proceeds of sales.
788. Supervision of cooking.
789–791. Commutation of rations.

ORGANIZATION.

Composition. Feb. 2, 1901, s. 17, v. 31, p. 752. Sec. 1140, R. S.

758. The Subsistence Department shall consist of one Commissary-General of Subsistence with the rank of brigadier-general, three assistant commissaries-general with the rank of colonel, four deputy commissaries-general with the rank of lieutenant-colonel, nine commissaries with the rank of major, twenty-seven commissaries with the rank of captain, mounted, the number of commissary-sergeants now authorized by law, who shall hereafter be known as post commissary-sergeants.[2] *Sec. 17, act of February 2, 1901 (31 Stat. L., 752).*

---

[1] For note containing the statutory history of the Subsistence Department see end of chapter.

[2] Section 17 of the act of February 2, 1901 (31 Stat. L., 752), contained the requirement that "all vacancies in the grades of colonel, lieutenant-colonel, and major, created or caused by this act, shall be filled by promotion, according to seniority, as now prescribed by law;" the same enactment also contained the proviso that "to fill vacancies in the grade of captain created by this act, the President is authorized to appoint officers of volunteers commissioned in the Subsistence Department since April 21, 1898." See also the act of March 2, 1901, paragraph 578, *ante.*

Section 2 of the act of July 7, 1898 (30 Stat. L., 715), authorized the Subsistence Department of the volunteer service to be increased "during the present war, and not to exceed one year thereafter, eight majors and twelve captains for the discharge of such subsistence duties as may be assigned to them by the Secretary of War, to be nominated and, by and with the advice and consent of the Senate, to be appointed by the President."

The same statute contained the requirement that "during the existence of the present war, and for not exceeding one year thereafter, every commissary of subsistence, of whatever rank, who shall be assigned to the duty of purchasing and shipping subsistence supplies at important depots, shall have the rank next above that held by him and not above colonel, but the number so assigned shall only be such as may be found necessary, not exceeding twelve; also that the two commissaries of subsistence who may be detailed as assistants to the Commissary-General of Subsistence, shall have the rank of colonel: *Provided,* That when any such officer is relieved from said duty, his temporary rank, pay, and emoluments shall cease, and he shall return to his lineal rank in the Department."

These statutes were repealed by section 11, act of March 2, 1899 (30 Stat. L., 979). For the volunteer subsistence staff, see the act of March 2, 1899 (30 ibid., 979).

PROMOTIONS, DETAILS.

Promotions. Feb. 2, 1901. s. 26, v. 31, p. 755.

759. So long as there remain any officers holding permanent appointments in the * * * Subsistence Department * * * including those appointed to original vacancies in the grades of captain and first lieutenant under the provisions of sections sixteen, seventeen, twenty-one, and twenty-four of this act, they shall be promoted according to seniority in the several grades, as now provided by law, and nothing herein contained shall be deemed to apply to vacancies which can be filled by such promotions or to the periods for which the officers so promoted shall hold their appointments. *Sec. 26, act of February 2, 1901, (31 Stat. L., 755).*

Details. Ibid.

760. When any vacancy, except that of the chief of the department or corps, shall occur, which can not be filled by promotion as provided in this section, it shall be filled by detail from the line of the Army, and no more permanent appointments shall be made in those departments or corps.[1] *Ibid.*

The same. Ibid.

761. Such details shall be made from the grade in which the vacancies exist, under such system of examination as the President may, from time to time, prescribe.[2] *Ibid.*

POST COMMISSARY-SERGEANTS.

Post commissary-sergeants. Mar. 3, 1873, c. 224, v. 17, p. 485. Sec. 1142, R. S.

762. The Secretary of War is authorized to select from the sergeants of the line of the Army who shall have faithfully served therein five years, three years of which in the grade of noncommissioned officers, as many commissary-sergeants as the service may require, not to exceed one for each military post or place of deposit of subsistence supplies, whose duty it shall be to receive and preserve the subsistence supplies at the posts, under the direction of

---

[1] Section 17 of the act of February 2, 1901, contained a provision excepting vacancies caused by that enactment from the operation of this section. Such vacancies are filled by the President under his constitutional power to appoint, as modified by the acts of August 6, 1894, (28 Stat. L., 234), February 2, 1901 (section 17), and the act of March 3, 1901.

[2] For regulations respecting details to the staff see the article so entitled in the chapter relating to the Staff Departments.

CIVIL EMPLOYEES.

The employment of civilians in the Subsistence Department is regulated by the annual acts of appropriation. The amount to be expended for such services was fixed at $105,000 in the acts of March 3, 1883, July 5, 1884, March 3, 1885, and June 30, 1886; at $110,000 by the acts of February 9, 1887, September 22, 1888, March 2, 1889, June 13, 1890, February 24, 1891, July 16, 1892, and February 27, 1893, and at $100,000 by the acts of August 6, 1894, February 12, 1895, and March 16, 1896.

the proper officers of the Subsistence Department, and under such regulations as shall be prescribed by the Secretary of War. The commissary-sergeants hereby authorized shall be subject to the rules and articles of war, and shall receive for their services the same pay and allowances as ordnance-sergeants.[1]

DUTIES.[2]

Par.
763. Purchases and issues.
764. Sales to officers and enlisted men.
765. Exceptional articles for sales.
766. Issues to seamen and marines.

Par.
767. Officers not to trade in articles of subsistence.
768. Methods of purchase; emergency purchases.

763. It shall be the duty of the officers of the Subsistence Department, under the direction of the Secretary of War, to purchase and issue to the Army such supplies as enter into the composition of the ration.[3]

Duties.
Apr. 14, 1818, c. 61, s. 7, v. 3, p. 427; Mar. 3, 1835, c. 49, s. 1, v. 7, p. 780.
Sec. 1141, R.S.

764. The officers of the Subsistence Department shall procure and keep for sale to officers and enlisted men at cost prices, for cash or on credit, such articles as may from time to time be designated by the inspectors-general of the Army. An account of all sales on credit shall be kept, and the amounts due for the same shall be reported monthly to the Paymaster-General.[4]

Sales to officers and enlisted men.
Credit sales.
July 28, 1866, c. 299, s. 25, v. 14, p. 336.
Sec. 1144, R.S.

---

[1] For regimental commissary-sergeants of cavalry, see section 2, act of February 2, 1901 (31 Stat. L., 748); for regimental commissary-sergeants of infantry, see section 10 of the same enactment. The act of June 30, 1882 (22 Stat. L., 123), authorizes the detail of one commissary-sergeant to act as assistant to the commissary of cadets at the Military Academy. By General Orders No. 17, A. G. O., of February 16, 1900, the number of post commissary-sergeants was fixed at 165; by General Orders No. 59, A. G. O., of May 3, 1900, the number was increased to 200. General Orders No. 1, A. G. O., of 1900, contains the requirement that "at military posts and stations and in the field the regimental commissaries and regimental commissary-sergeants of cavalry and infantry regiments will perform the necessary work of their respective offices in the subsistence department at the stations of the headquarters of their regiments, and no commissary-sergeants of the general staff will be assigned to posts at which there is a regimental headquarters, except under unusual conditions."

[2] The Subsistence Department, under the direction of the Secretary of War, provides for the distribution and expenditure of funds appropriated for subsisting enlisted men and for purchasing articles kept for sale to officers and enlisted men. The Commissary-General furnishes lists of articles authorized to be kept for sale, and gives instructions for procuring, distributing, issuing, selling, and accounting for all subsistence supplies. Par. 1351, A. R., 1901.

Subsistence supplies comprise—

(1) Subsistence stores, consisting of articles composing the ration and those furnished for sale to officers and enlisted men, also lantern candles for stable use, forage for beef cattle, and coarse salt for public animals and rebrining.

(2) Subsistence property, consisting of the necessary means for handling, preserving, issuing, selling, and accounting for these stores. Par. 1355, ibid.

[3] For general provisions respecting the procurement of supplies, see the chapter entitled CONTRACTS AND PURCHASES; see also the chapter entitled THE QUARTERMASTER'S DEPARTMENT.

[4] See the title, *post*, *Sales of Subsistence Stores.*

Exceptional supplies. Feb. 12, 1895 v. 28, p. 658.

765. Hereafter exceptional articles of subsistence stores for officers and enlisted men, which are to be paid for by them, regardless of condition upon arrival at posts, may, under regulations to be prescribed by the Secretary of War, be obtained by open purchase without advertising. *Act of February 12, 1895 (28 Stat. L., 658).*

Subsistence to seamen and marines. **Sec. 1143, R. S.**

766. The officers of the Subsistence Department shall, upon the requisition of the naval or marine officer commanding any detachment of seamen or marines under orders to act on shore, in cooperation with the land troops, and during the time such detachment is so acting or proceeding to act, furnish rations to the officers, seamen, and marines of the same.

Officers not to trade in articles for issue or sale. Apr. 14, 1818, c. 61, s. 9, v. 3, p. 427; Mar. 3, 1835, c. 49, s. 1, v. 4, p. 780; Mar. 3, 1865, c. 81, s. 6, v. 13, p. 497; July 28, 1866, c. 299, s. 25, v. 14, p. 336. **Sec. 1150, R. S.**

767. No officer belonging to the Subsistence Department, or doing the duty of a subsistence officer, shall be concerned, directly or indirectly, in the purchase or sale of any article entering into the composition of the ration allowed to troops in the service of the United States, or of any article designated by the inspectors-general of the Army, and furnished for sale to officers and enlisted men at cost prices, or of tobacco furnished for sale to enlisted men, except on account of the United States; nor shall any such officer take or apply to his own use any gain or emolument for negotiating or transacting any business connected with the duties of his office, other than that which may be allowed by law.

Purchases. Mar. 2, 1901, v. 31, p. 905.

768. Hereafter, except in cases of emergency or where it is impracticable to secure competition, the purchase of all supplies for the use of the various departments and posts of the Army and of the branches of the army service shall only be made after advertisement, and shall be purchased where the same can be purchased the cheapest, quality and cost of transportation and the interests of the Government considered; but every open-market emergency purchase made in the manner common among business men which exceeds in amount two hundred dollars shall be reported for approval to the Secretary of War under such regulations as he may prescribe.[1] *Act of March 2, 1901 (31 Stat. L., 905).*

---

[1] The object of this provision is to secure the Government the benefit arising from competition. It is expected that this benefit will manifest itself in the selection of the best and most suitable supplies for the least expenditure of public money. Where the prices for supplies are fixed and uniform it is unusual and impracticable to advertise for proposals. Such cases are not within the meaning of the statute. 3 Dig. 2nd Compt. Dec., par. 1112. Expenditures for water and gas are not expenditures for supplies within the meaning of this act. Ibid., 1111. So held also as to street-car tickets. Ibid., 1124.

The officers of the Quartermaster's Department are not bound to award contracts

THE RATION.[1]

Par.
769. President to prescribe components.
770. The garrison ration, the field ration, the emergency ration; meat issues, proportions; the same, substitutions.
771, 772. Issues to enlisted men.
773. Issues to matrons and nurses.
774. Issues to Indians.
775, 776. Sugar and coffee.
777. The same, commutation.

President to prescribe components of ration.
Feb. 2, 1901, s. 40, v. 31, p. 758.

769. The President is hereby authorized to prescribe the kinds and quantities of the component articles of the army ration, and to direct the issue of substitutive equivalent articles in place of any such components whenever, in his opinion, economy and due regard to the health and comfort of the troops may so require.[2] *Sec. 40, act of February 2, 1901 (31 Stat. L., 758).*

---

to the lowest bidder in every instance, but only to the lowest responsible bidder for the best and most suitable article, in case the right to reject "any and all bids," which the statute reserves, is not exercised. Ibid., 433.

Evidence of compliance with the requirements of this statute should accompany all contracts filed in the Second Comptroller's Office. Ibid., 426.

Whenever an officer of the Army enters into a contract on behalf of the Government for the purchase of quartermaster's or subsistence supplies, under the authority conferred by this statute, it should be made to appear by the certificate of the officer that the supplies were required for immediate use. The officer should also certify as to the time and manner of the advertisement, and that the award was made to the lowest responsible bidder for the best and most suitable article. Ibid., 428.

Under the act of July 5, 1884 (23 Stat. L., 109), there are four classes of purchases of army supplies made by the Quartermaster and Subsistence Departments, namely: First "emergency purchases," which must be at once reported to the Secretary of War for his approval; second, purchases of "small amounts for immediate use," which must be made "by contract after public notice of not less than ten days;" third, purchases of the great bulk of army supplies, which must be made under the general rule prescribed by the Army Regulations, that is, after public notice of not less than thirty days; and, fourth, unusual and important purchases, where the Secretary of War deems public notice of from thirty to sixty days advisable. Ibid., 1119.

In all cases where purchases of regular or miscellaneous supplies for the Army are made by the Quartermaster's Department or by the Subsistence Department after public notice of ten days or more, without executing formal written contracts, the vouchers therefor must be accompanied by the following evidence, namely: First, a copy of the public notice for bids; second, a certificate as to the time and manner of the public notice for bids; third, the accepted bid; fourth, a copy of the letter accepting the bid, and, fifth, a certificate that the award was made to the lowest responsible bidder for the best and most suitable article. Ibid., p. 1122.

The object of this legislation is to secure for the Government the benefit of competition in obtaining supplies and to prevent favoritism in making the purchases thereof. It contemplates one general mode of purchase, namely, by contract, after advertisement, with "the lowest responsible bidder for the best and most suitable article," with but a single exception, and that is where an "emergency" exists requiring the purchase to be otherwise made. Such emergency may arise not only before the required public notice can be given, but after it has once been given, in consequence of the failure to receive any bids or proposals; in either case the purchase thereupon would be an emergency purchase, and come within the requirement of the statute for an immediate report to the Secretary of War for his approval. This requirement is, I think, designed to extend to all purchases which are not made agreeably to the general mode above indicated, and hence it applies to the purchase of parts of machinery, or parts of stoves or ranges, for repairs, or of patented articles, when the same is (as in cases of emergency, and those only, it may be) made in open market. XVIII Opin. Att. Gen., 349.

[1] For historical note in reference to the army ration see end of chapter.

[2] This enactment replaces the requirement of section 1146, Revised Statutes, which authorized the President to "make such alterations in the component parts of the ration as a due regard to the health and comfort of the Army and economy may require."

770. In accordance with the provisions of section 40 of the act entitled "An act to increase the efficiency of the permanent military establishment of the United States," approved February 2, 1901, which authorizes the President to "prescribe the kinds and quantities of the component articles of the army ration, and to direct the issue of substitutive equivalent articles in place of any such components whenever, in his opinion, economy and a due regard to the health and comfort of the troops may so require," the following is promulgated for the information and guidance of all concerned:

The kinds and quantities of articles composing the army ration and the substitutive equivalent articles which may be issued in place of such components shall be as follows:

1. For troops in garrison (garrison ration).

	Standard articles.		Substitutive articles.	
	Kinds.	Quantities.	Kinds.	Quantities.
Meat components	Fresh beef .... ounces..	20	Fresh mutton *a* .... ounces..	20
			Bacon .... do *b* ..	12
			Canned meat *c* .... do....	16
			Dried fish .... do....	14
			Pickled fish .... do....	18
			Canned fish .... do....	16
Bread components	Flour .... do....	18	Soft bread .... do....	18
			Hard bread *d* .... do....	16
			Corn meal .... do....	20
Vegetable components *e*	Beans .... do....	$2\frac{2}{5}$	Pease .... do....	$2\frac{2}{5}$
			Rice .... do....	$1\frac{3}{5}$
			Hominy .... do....	$1\frac{3}{5}$
	Potatoes .... do....	16	Potatoes .... do....	$12\frac{4}{5}$
			Onions .... do....	$3\frac{1}{5}$
			Potatoes .... do....	$12\frac{4}{5}$
			Canned tomatoes .... do....	$3\frac{1}{5}$
			Potatoes .... do....	$11\frac{1}{5}$
			Fresh vegetables, not canned *f* .... ounces..	$4\frac{4}{5}$
			Desiccated vegetables *g* ounces..............	$2\frac{2}{5}$
Dried (or evaporated) fruit components. *h*	Prunes .... do....	$1\frac{3}{5}$	Apples .... do....	$1\frac{3}{5}$
			Peaches .... do....	$1\frac{3}{5}$
Coffee and sugar components.	Coffee, green .... do....	$1\frac{3}{5}$	Roasted and ground . do....	$1\frac{7}{25}$
			Tea, black or green . ounce..	$\frac{8}{25}$
	Sugar .... do....	$3\frac{1}{5}$	....	....
Seasoning components	Vinegar .... gill..	$\frac{8}{25}$	Vinegar .... gill..	$\frac{4}{25}$
			Cucumber pickles .... do....	$\frac{4}{25}$
	Salt .... ounce..	$\frac{16}{25}$	....	....
	Pepper, black .... do....	$\frac{1}{25}$	....	....
Soap and candle components.	Soap .... do....	$\frac{16}{25}$	....	....
	Candles *i* .... do....	$\frac{6}{25}$	....	....

---

[a] When the cost does not exceed that of fresh beef.
[b] In Alaska 16 ounces of bacon, or when desired 16 ounces of salt pork or 22 ounces salt beef.
[c] When impracticable to furnish fresh meat.
[d] To be ordered issued only when impracticable to use flour or soft bread.
[e] In Alaska the allowance of *fresh* vegetables will be 24 ounces instead of 16 ounces.
[f] When they can be obtained in the vicinity or transported in a wholesome condition from a distance.
[g] When impracticable to furnish *fresh* vegetables. In Alaska $3\frac{2}{5}$ ounces instead of $2\frac{2}{5}$ ounces.
[h] Thirty per cent of the issue to be prunes when practicable.
[i] When illumination is not furnished by the Quartermaster's Department. In Alaska $\frac{8}{25}$ ounce instead of $\frac{6}{25}$ ounce.

2. For troops in the field in active campaign (field ration).

	Standard articles.		Substitutive articles.	
	Kinds.	Quantities.	Kinds.	Quantities.
Meat components	Fresh beef *a* ....ounces..	20	Fresh mutton *a*....ounces..	20
			Canned meat *b*........do....	16
			Bacon.................do....	12
Bread components	Flour ....do....	18	Soft bread............do....	18
			Hard bread ....do....	16
	Baking powder *c* ...ounce..	$\frac{16}{25}$	Hops *d*..............ounce..	$\frac{1}{50}$
			Dried or compressed yeast, *d* .... ounce..	$\frac{1}{25}$
Vegetable components	Beans ....ounces..	$2\frac{2}{5}$	Rice ....ounces..	$1\frac{3}{5}$
	Potatoes *a*.............do..	16	Potatoes *a*............do....	$12\frac{4}{5}$
			Onions *a*..............do....	$3\frac{1}{5}$
			Desiccated potatoes..do....	$2\frac{2}{5}$
			Desiccated potatoes..do....	$1\frac{23}{25}$
			Desiccated onions..ounce..	$\frac{12}{25}$
			Desiccated potatoes.ounces.	$1\frac{23}{25}$
			Canned tomatoes ....do....	$3\frac{1}{5}$
Fruit components	Jam..................do..	$1\frac{2}{5}$	....	....
Coffee and sugar components.	Coffee, roasted and ground, ... ounces..	$1\frac{7}{25}$	Tea, black or green..ounce.	$\frac{8}{25}$
	Sugar ....do....	$3\frac{1}{5}$	....	....
Seasoning components	Vinegar..............gill..	$\frac{8}{25}$	Vinegar...............gill..	$\frac{4}{25}$
			Cucumber pickles ...do....	$\frac{4}{25}$
	Salt ....ounce..	$\frac{16}{25}$	....	....
	Pepper, black ....do....	$\frac{1}{25}$	....	....
Soap and candle components.	Soap ....do....	$\frac{16}{25}$	....	....
	Candles ....do....	$\frac{6}{25}$	....	....

a When procurable locally.
b When fresh meat can not be procured locally.
c When ovens are not available.
d When ovens are available.

3. For troops when traveling otherwise than by marching or when for short periods they are separated from cooking facilities (travel ration). (a)

Standard articles.		Substitutive articles.	
Kinds.	Quantities per 100 rations.	Kinds.	Quantities per 100 rations.
	Pounds.		*Pounds.*
Soft bread	$112\frac{1}{2}$	Hard bread	100
Canned corn beef	75	Corned beef hash	75
Baked beans	25	....	....
Canned tomatoes	50	....	....
Coffee, roasted and ground	8	....	....
Sugar	15	....	....

a The issue of liquid coffee to troops when traveling by rail is governed by paragraph 1388 of the Army Regulations of 1901.

4. For troops traveling on vessels of the United States army transport service.

Food on transports for troops traveling will be prepared from the articles of subsistence stores which compose the ration for troops in garrison, varied by the substitution of other articles of authorized subsistence stores of equal money value when required. No savings will be allowed to troops on transports.

5. For use of troops on emergent occasions in active campaign (emergency ration).

An emergency ration, prepared under direction of the War Department, will be issued to troops on active campaign, but will not be used at any time or place where regular rations are obtainable. It will be packed in a conveniently shaped package, and will be carried in the haversack or saddlebags and accounted for at inspection, etc., by the soldier.

6. Proportions of meat issues.

Fresh meats will ordinarily be issued seven days in ten, and salt meats three days in ten. If fish (dried, pickled, or canned) is issued it will be in substitution of salt meat. The proportions of the meat issues may be varied at the discretion of department commanders, not, however, without due consideration being given to the equitable rights of contractors engaged in furnishing fresh meats to the troops under their commands.

7. Substitute when the issue of both fresh meat and vegetables is impracticable.

Whenever the issue of both the fresh meat and vegetable components is impracticable there may be issued in lieu of them canned fresh-beef-and-vegetable stew, at the rate of 28½ ounces to the ration.

Issues to enlisted men.

Feb. 8, 1815, v. 3, p. 204; Mar. 2, 1821, v. 3, p. 615; July 5, 1862, v. 12, p. 508; July 16, 1892, v. 27, p. 178. **Sec. 1293, R.S.**

771. Enlisted men shall be entitled to receive one ration daily.[1]

The same restriction.

July 16, 1892, v. 27, p. 178.

772. Hereafter no enlisted man shall be entitled to more than one ration daily.[2] *Act of July 16, 1892 (27 Stat. L., 178).*

Matrons and nurses.

Mar. 16, 1802, c. 9, s. 5, v. 2, p. 134; June 18, 1878, s. 5, v. 20, p. 150; Feb. 2, 1901, s. 19, v. 31, p. 753.

Sec. 1295, R.S.

773. Hospital matrons and the nurses employed in post or regimental hospitals [and members of the female nurse corps] shall be entitled to receive one ration daily. *Sec. 19, act of February 2, 1901 (31 Stat. L., 753).*

---

[1] ISSUES TO CIVILIANS.

Issues of rations to civilian employees are governed by the requirements of paragraph 1398, Army Regulations, 1901, which provides that "issues of rations to civilians employed with the Army will be made on ration returns signed by the officers in charge of the employees, when ordered by the commanding officer."

Rations furnished for the use of the Army, being the public property of the United States, can only be disposed of or issued in accordance with law. Issues to destitute citizens not being so authorized are made on the responsibility of the officer ordering the same. In this connection, see paragraph 1405, A. R., 1901.

Private persons not connected with the Army are not entitled to be subsisted at the expense of the United States, either while in quarantine hospitals or otherwise. 5 Comp. Dec., 191.

A civilian employee of the Army engaged to accompany a scientific expedition at a salary of $125 per month is not entitled to subsistence, but, like a commissioned officer, must subsist himself. Herendeen *v.* U. S., 28 Ct. Cls., 348.

[2] Under General Orders No. 73, A. G. O., of 1879, an officer of the Army to whom a sum of money has been advanced for supplying enlisted men with liquid coffee for the estimated number of days' travel at the rate of 21 cents per day each while trav-

Issues to Indians.
June 30, 1834, s. 16, v. 4, p. 738; June 22, 1874, s. 3, v. 18, p. 176.
Sec. 2110, R. S.

774. The President is authorized to cause such rations as he deems proper, and as can be spared from the army provisions without injury to the service, to be issued under such regulations as he shall think fit to establish, to Indians who may visit the military posts or agencies of the United States on the frontiers, or in their respective nations, and a special account of these issues shall be kept and rendered.[1]

Sugar and coffee ration to be issued weekly.
July 5, 1838, c. 162, s. 17, v. 5, p. 258.
Sec. 1148, R. S.

775. The ration of sugar and coffee where issued in kind, shall, when the convenience of the service permits, be issued weekly.

Coffee and sugar may be commuted.
July 5, 1862, c. 133, s. 10, v. 12, p. 510.
Sec. 1147, R. S.

776. The Secretary of War may commute the ration of coffee and sugar for the extract of coffee combined with milk and sugar, if he shall believe such commutation to be conducive to the health and comfort of the Army, and not to be more expensive to the Government than the present ration; provided the same shall be acceptable to the men.

Commutation.
July 5, 1838, s. 17, v. 5, p. 258.
Sec. 1294, R. S.

777. For each ration of sugar and coffee not issued, nor commuted for the extract of coffee combined with milk and sugar, enlisted men shall be paid in money.

SALES OF SUBSISTENCE STORES.

Par.
778. Stores for sales.
779. Sales of rations.
780. Sales of tobacco.
781. Sales to be made at cost price.

Par.
782. Credit sales to officers.
783. The same, enlisted men.
784. The same, tobacco.

Stores for sales.
July 28, 1866, s. 5, v. 14, p. 336.
Sec. 1144, R. S.

778. The officers of the Subsistence Department shall procure and keep for sale to officers and enlisted men at cost prices for cash or on credit, such articles as may from time to time be designated by the inspectors-general of the Army. An account of sales on credit shall be kept, and the amounts due for the same shall be reported monthly to the Paymaster-General.

Sales of rations.
Mar. 3, 1865, c. 81, s. 5, v. 13, p. 497.
Sec. 1145, R. S.

779. Commissioned officers of the Army, serving in the field, may purchase rations for their own use, from any commissary of subsistence, on credit, at cost prices; and

---

eling, is authorized to turn over to the company commanders for the benefit of the company funds any balance of such sum remaining unexpended at the end of the travel. 6 Comp. Dec., 369.

[1] Small quantities of food (articles of the ration) may, on the order of the commanding officer, be issued to Indians visiting a military post. The order will state the number of Indians and their tribe, number of days for which the issues are made, quantities, and necessity for the issues. Indians will not be continuously subsisted in this manner except by authority of the Secretary of War. A copy of the order directing the issue will accompany the abstract of issues. Par. 1266, A. R., 1895.

the amounts due for such purchases shall be reported monthly to the Paymaster-General.[1]

Sales of tobacco.
Mar. 3, 1865, c. 81, s. 6, v. 13, p. 497.
Sec. 1149, R. S.

780. Tobacco shall be furnished to the enlisted men by the commissaries of subsistence, at cost prices, exclusive of the cost of transportation, in such quantities as they may require, not exceeding sixteen ounces per month.[1]

Sales to be made at cost.
July 5, 1884, v. 23, p. 108.

781. Hereafter all sales of subsistence supplies to officers and enlisted men shall be made at cost price only; and the cost price of each article shall be understood, in all cases of such sales, to be the invoice price of the last lot of that article received by the officer making the sale prior to the first day of the month in which the sale is made.[1] *Act of July 5, 1884 (23 Stat. L., 108).*

Deductions for rations purchased.
3 Mar., 1865, c. 81, s. 5, v. 13, p. 497.
28 July, 1866, c. 299, s. 25, v. 14, p. 336.
Sec. 1299, R.S.

782. The amount due from any officer for rations purchased on credit, or for any article designated by the inspectors-general of the Army and purchased on credit from commissaries of subsistence, shall be deducted from the payment made to such officer next after such purchase shall have been reported to the Paymaster-General.

For articles purchased.
28 July, 1866, c. 299, s. 25, v. 14, p. 336.
Sec. 1300, R.S.

783. The amount due from any enlisted man for articles designated by the inspectors-general of the Army, and sold to him on credit by commissaries of subsistence, shall be deducted from the payment made to him next after such sale shall have been reported to the Paymaster-General.

For tobacco purchased.
3 Mar., 1865, c. 81, s. 6, v. 13, p. 497.
Sec. 1301, R.S.

784. The amount due from any enlisted man for tobacco sold to him at cost prices by the United States shall be deducted from his pay in the manner provided for the settlement of clothing accounts.

PROCEEDS OF SALES.

Proceeds of sales available for new purchases.
Sec. 3618, R.S.

785. All proceeds of sales of old material, condemned stores, supplies, or other public property of any kind, except the proceeds of the sale or leasing of marine hospitals, or of the sales of revenue cutters, or of the sales of commissary stores to the officers and enlisted men of the Army, or of materials, stores, or supplies sold to officers and soldiers of the Army, or of the sales of condemned navy clothing, or of sales of materials, stores, or supplies to any exploring or surveying expedition authorized by law, shall be deposited and covered into the Treasury as miscellaneous receipts, on account of proceeds of Government property, and shall not be withdrawn or applied, except in consequence of an appropriation made by law.

---

[1] The acts of June 23, 1879, and May 4, 1880, contained the requirement that 10 per cent of the cost price should be added to the cost of all stores (except tobacco) sold to officers and enlisted men, to cover wastage, transportation, and other incidental charges (21 Stat. L., 32, 111). This provision was repealed by the act of July 5, 1884, above cited. To a civilian employed with the Army at a remote place, where food can not otherwise be procured, stores will be sold for cash, in limited quantities, for his own use, at invoice or contract prices with 10 per cent added. Par. 1284, A. R., 1895. The amounts due for such sales to be deducted from the next payment to the officer or enlisted man. See paragraphs 782, 783, and 784, *post.*

For statutory regulation of the purchase of exceptional articles of subsistence see the act of February 12, 1895 (28 Stat. L., 658). Paragraph 765, *ante.*

Proceeds of certain sales available for purchase of supplies.

786. All moneys received from the leasing or sale of marine hospitals, or the sale of revenue cutters, or from the sale of commissary stores to the officers and enlisted men of the Army [or from the sale of materials, stores, or supplies sold to officers and soldiers of the Army], or from sales of condemned clothing of the Navy, or from sales of materials, stores, or supplies to any exploring or surveying expedition authorized by law, shall respectively revert to that appropriation out of which they were originally expended, and shall be applied to the purposes for which they are appropriated by law.

Mar. 3, 1847, c. 48, s. 1, v. 9, p. 171; Apr. 20, 1866, c. 63, ss. 1, 2, v. 14, p. 40; July 28, 1866, c. 299, s. 25, v. 14, p. 336; May 8, 1872, c. 140, s. 5, v. 17, p. 83; June 8, 1872, c. 348, v. 17, p. 337; Mar. 3, 1875, c. 130, v. 18, p. 388; Mar. 3, 1875, c. 131, v. 18, p. 410; Feb. 27, 1877, c. 69, v. 19, p. 249.
Sec. 3692, R. S.

Appropriations for subsistence applicable to purchase of stores for sale to officers, etc.

787. So much of the appropriation for subsistence of the Army as may be necessary may be applied to the purchase of subsistence stores for sale to officers for the use of themselves and their families, and to commanders of companies or other organizations, for the use of the enlisted men of their companies or organizations and the proceeds of all sales of subsistence supplies shall hereafter be exempt from being covered into the Treasury and shall be immediately available for the purchase of fresh supplies.[1] *Act of March 3, 1875 (18 Stat. L., 410).*

Mar. 3, 1875, v. 18, p. 410.

Superintendence of cooking.

788. The line officers of the Army shall superintend the cooking done for the enlisted men.[2]

Mar. 3, 1863, c. 78, s. 8, v. 12, p. 744.
Sec. 1234, R. S.

---

[1] Under the act of March 3, 1875 (18 Stat. L., 410), the proceeds of all sales of subsistence supplies are exempt from being covered into the Treasury, and are immediately available for the purchase of fresh supplies. 3 Dig. 2nd Comp. Dec., par. 1259.

Under the act of March 3, 1875 (18 Stat. L., 410), the proceeds of all sales of subsistence supplies, being exempt from being covered into the Treasury, revert to the appropriation "Subsistence of the Army," out of which they were originally expended, and are applicable to the purpose for which they are appropriated by law, namely, the purchase of fresh supplies only during the fiscal year for which the appropriation to which they revert is available, for which purpose they are immediately available without the intervention of a repay warrant. Ibid.

The subsistence supplies contemplated by the provision of the act of March 3, 1875 (18 Stat. L., 410), declaring the proceeds of all sales of such supplies immediately available for the purchase of fresh supplies, comprise not only the supplies denominated "subsistence stores," but also the necessary means for handling, preserving, issuing, selling, and accounting for these supplies, as tools, scales, measures, utensils, stationery, safes, office furniture, etc. Ibid., 1336.

[2] Section 1233, Revised Statutes, which required cooks to be detailed, in turn, from the privates of each company was repealed by the act of June 29, 1879 (20 Stat. L., ch. 24, p. 276). See G. O. 94, A. G. O., 1898. The act of July 7, 1898 (30 Stat. L., 721), authorized the enlistment of one cook in each company composing the military establishment. Such cook was to have the rank and receive the pay of a corporal. This statute was replaced by the act of March 2, 1899 (30 Stat. L., 977), which authorized two cooks to be enlisted in each troop of cavalry, battery of artillery, and company of infantry of the Regular and Volunteer establishments. By section 9 of the act of March 2, 1899, the cooks so enlisted were to have the pay of sergeants of infantry.

COMMUTATION OF RATIONS.

Coffee and sugar.
July 5, 1838, s. 17, v. 5, p. 258.
Sec. 1294, R. S.

789. For each ration of sugar and coffee not issued, nor commuted for the extract of coffee combined with milk and sugar, enlisted men shall be paid in money.[1]

---

[1] Commutation in the military or naval service is money paid in substitution of something to which an officer, soldier, or sailor is entitled. Commutation, being regulated by statutes and regulations, can not be allowed by inferior authority. The principle which governs the commutation of rations in lieu of subsistence is that commutation will not be allowed where subsistence in kind is provided by the Government. Jaekle *v.* U. S., 28 Ct. Cls., 133.

Authority to establish the rates of the allowance for commutation of rations has not been given by statute, but these rates have been left to be fixed by Army Regulations. But these amounts are recognized and sanctioned in the provisions of the Army appropriation acts relating to the Subsistence Department. Dig. Opin. J. A. G., par. 1957.

Paragraph 1273, Army Regulations, 1895, in directing that commutation in lieu of rations shall not be allowed to soldiers where subsistence in kind is provided by the Government, excepts cases where the same is specially authorized by the Secretary of War. *Held*, that this part of the Regulations was substantially superseded by the statutory provision of the existing army appropriation act of February 27, 1893, which enumerates several specific classes of enlisted men as persons to whom the payment may be made without reserving to the Secretary of War any authority to extend the privilege. Par. 1958, ibid.

The allowance for commutation of rations, made payable by the army appropriation act of February 27, 1893, "to enlisted men traveling on detached duty, when it is impracticable to carry rations," etc., *held* to be restricted to the period covered by the travel, and not to be payable to a soldier for commutation of rations consumed at the destination where he was placed by his orders on detached duty, viz, for four days' board at a hotel at the terminus of his travel. Par. 1959, ibid.

A claim for commutation of rations on furlough can not be allowed without the production of the furlough issued, or other satisfactory evidence that payment has not been made. The burden of proof rests upon the claimant to establish the validity of his claim by something more than his unsupported statements. 1 Comp. Dec., 513.

Commutation of rations may be allowed at the following rates, under the conditions mentioned, viz:

Conditions.	Rate. per day each.
1. To a soldier at the conclusion of his furlough, provided that on or before the last day thereof he has reported at his proper station or has been discharged	$0.25
2. To sergeants of the post noncommissioned staff (and soldiers acting as such) on duty at forts and stations where there are no other troops	.40
3. To a soldier on detached duty, stationed in a city or town where subsistence is not furnished by the Government	.75
4. To a soldier traveling under orders from a place or station at which his rations have been regularly commuted	1.50
5. To enlisted men traveling under orders (when the journey can not be performed in twenty-four hours and it is impracticable to carry rations of any kind), as follows:	
To an enlisted man traveling alone	1.50
To two enlisted men traveling as a detatchment or traveling as a guard to an insane patient or military prisoner, each	1.50
To an insane patient or military prisoner traveling under guard of one or two enlisted men, to be paid, on the order of the commanding officer, in advance to, and to be receipted for by, the person to whose charge the patient or military prisoner is committed by the order	1.50

Par. 1272, A. R., 1895.

Commutation of rations will not be allowed to enlisted men serving where subsistence is furnished by the Government; or traveling under orders when they can carry and cook their rations, or can carry cooked or travel rations; or traveling under orders by steamboat or steamship where the passage rates include meals; or failing to report at their proper stations on or before the last day of furlough unless discharged; or recruiting parties at their stations; nor to civil employees. Par. 1273, ibid.

A soldier who has been granted a furlough to expire upon the arrival of his regiment in the United States, is entitled to commutation of rations until he receives notice of its arrival and for a time thereafter sufficient to enable him to join it. 5 Comp. Dec., 941.

Pay during captivity.
Mar. 30, 1814, c. 37, s.14, v.3, p.115.
Sec. 1288, R. S.

790. Every noncommissioned officer and private of the Regular Army, and every officer, noncommissioned officer, and private of any militia or volunteer corps in the service of the United States who is captured by the enemy, shall be entitled to receive during his captivity, notwithstanding the expiration of his term of service, the same pay, subsistence[1] and allowance to which he may be entitled while in the actual service of the United States; but this provision shall not be construed to entitle any prisoner of war of such militia corps to any pay or compensation after the date of his parole, except the traveling expenses allowed by law.

Commutation of rations.
Mar. 2, 1901, v. 31, p. 904.

791. For the payment of the regulation allowances for commutation of rations in lieu of rations: To enlisted men on furlough; to ordnance-sergeants on duty at ungarrisoned posts; to enlisted men and male and female nurses stationed at places where rations in kind can not be economically issued; to enlisted men traveling on detached duty when it is impracticable to carry rations of any kind; to enlisted men selected to contest for places or prizes in department and army rifle competitions while traveling to and from places of contests; and to male and female nurses on leaves of absence, to be expended under the direction of the Secretary of War. *Act of March 2, 1901 (31 Stat. L., 904).*

Historical note.—The office of Commissary-General of Supplies and Purchases was created during the war of the Revolution by a resolution of Congress dated July 19, 1775, and on the recommendation of General Washington, Jonathan Trumbull, of Connecticut, was appointed to the office. The methods of supplying the Army with provisions having proved inadequate, however, the matter was investigated by a committee of the Congress, and the department was reorganized by a resolution of Congress dated June 10, 1777. Under the new arrangement the duties of purchase and distribution were separated and intrusted to independent bureaus under the Commissary-General of Purchases and the Commissary-General of Issues. The duties of the Commissary-General of Issues were defined in the resolution of Congress of June 10, 1777; those of the Commissary-General of Purchases were made the subject of occasional modifications, and will be found in the resolutions of June 10, 1777, and November 30, 1780. By the resolution of July 10, 1781, the departments of purchases and issues were merged in the office of Superintendent of Finance, under whose direction a system of supplying the Army by contracts was established. By a subsequent resolution, dated May 28, 1784, the office of Superintendent of Finance was abolished, its duties being merged in the Board of the Treasury created by that enactment. Under this arrangement, which continued in force after the organization of the Government under the Constitution, all subsistence supplies for the Army were purchased by the Treasury Department under contracts entered into under the direction of the Secretary of the Treasury (sec. 5, act of May 8, 1792, 1 Stat. L., 280; act of February 23, 1795, ibid., 419). By the acts of July 16, 1798 (ibid., 610), and March 3, 1809 (2 ibid., 535), the present methods of purchasing supplies for the Army, and accounting for the same, were established.[1] The contract system continued to exist until the reorganization of the staff, which was accomplished by the act of April 4, 1818 (3 ibid., 426), when it was replaced by the present Subsistence Department.

---

[1] Under section 1288, Revised Statutes, which provides that any soldier who is captured by the enemy shall be entitled to receive, during his captivity, "the same pay, subsistence, and allowance to which he may be entitled while in the actual service," a soldier so captured is entitled to commutation of rations during his captivity at the rate provided in General Orders No. 37, A. G. O., of 1865, viz, 25 cents per day from the appropriation "Subsistence of the Army." 6 Comp. Dec., 846.

At the reduction of 1802 a system of military agencies was established in connection with the procurement and distribution of subsistence stores and supplies. Three military agents and such number of assistant military agents, not exceeding one to each military post, as the service might require, were authorized by section 3 of the act of March 16, 1802 (2 Stat. L., 132); the assistants were to be selected from the line of the Army and were to receive additional monthly compensation. By section 4 of the act of March 28, 1812 (ibid., 696), the military agency system was abolished, and the duty of procuring military supplies was vested in the Commissary-General of Purchases and in the Quartermaster's Department thereby created. By section 2 of the act of April 4, 1818 (3 ibid., 426), the office of Commissary-General was created with the rank and pay of a colonel of ordnance, and provision was made for as many assistant commissaries as the service might require; these officers were to be detailed from the line, and were to receive twenty dollers per month additional pay. The duties of the department thus created were restricted to the purchase and issue of subsistence stores and supplies; and the system, which was experimental in character, was to continue for five years from the passage of the act.

At the general reduction of 1821[2] the organization of the department was somewhat modified, the office of Commissary-General of Subsistence being created and provision made for as many assistant commissaries as the service might require, not exceeding fifty, who were to be taken from subalterns of the line, and were to receive, in addition to their monthly pay, certain sums, to be regulated by the Secretary of War, and to be not less than ten dollars nor more than twenty dollars in amount; they were to perform duty in both the Subsistence and Quartermaster's Departments, as might be required under the orders of the Secretary of War. By the act of June 23, 1823 (3 ibid., 721), the existing arrangement of the department was continued for five years. Two assistant commissaries with the rank of major were added to the department by the act of March 3, 1829 (4 ibid., 360), and the system was to be continued for a third period of five years. By section 5 of the act of March 3, 1835 (ibid., 780), the Subsistence Department, which had hitherto been in an experimental stage, was placed upon a permanent basis. By section 11 of the act of July 5, 1838 (5 ibid., 256), there were added to the department one assistant commissary-general of subsistence with the rank and pay of a lieutenant-colonel of dragoons, one commissary of subsistence with the rank and pay of quartermaster, and three commissaries with the rank and pay of assistant quartermasters.

No further change in the composition or duties of the department was made until the outbreak of the war with Mexico, when, by section 5 of the act of June 18, 1846 (9 ibid., 17), the President was authorized to appoint as many additional officers, not exceeding one commissary (major) to each brigade, and one assistant commissary (captain) to each regiment, as he might deem necessary; these appointments, however, were not to extend beyond the period of the existing war. By the act of September 26, 1850 (9 ibid., 469), four commissaries of subsistence (captains) were added to the existing establishment, and these appointments were to be made from the line of the Army.

At the commencement of the war of the rebellion a commissary of subsistence (captain) was allowed for each brigade of the volunteer forces authorized to be raised by the act of July 22, 1861 (12 Stat. L. 269), and four commissaries of subsistence (majors) and eight commissaries of subsistence with the rank of captain were added to the permanent establishment by the act of August 3, 1861 (ibid., 287); by section 10 of the act of July 17, 1862 (ibid., 599), a commissary of subsistence for each army corps, with the rank of lieutenant-colonel, was also authorized. By the act of February 9, 1863 (ibid., 648), the department was reorganized, the rank of brigadier-general being conferred upon the Commissary-General of Subsistence, who was to be selected from the department, and one colonel, one lieutenant-colonel, and two majors were added. These offices were to be filled by regular promotion.

---

[1] For a more extended discussion of the methods of procuring supplies during the period between the the organization of the Government under the Constitution and the general reorganization of the staff in 1821, see the note in connection with the Quartermaster's Department, page 290, *ante*.

[2] Act of March 2, 1821 (3 Stat. L., 615).

The peace establishment of the department was fixed by section 16 of the act of July 28, 1866 (14 ibid., 335), as follows: One Commissary-General of Subsistence (brigadier-general), two assistant commissaries-general of subsistence (colonels), two deputy commissaries-general of subsistence (lieutenant-colonels), eight commissaries (majors), and sixteen commissaries of subsistence (captains). The repealing clause of the act of July 28, 1866, having been regarded as including within its scope the provision for additional compensation to officers detailed from the line, which had been authorized by section 3 of the act of March 3, 1821 (3 ibid., 615), it was provided by section 24 of the act of July 15, 1870 (16 ibid., 320), that lieutenants of the line detailed to perform the duties of acting commissaries of subsistence should receive $100 additional pay per annum. Section 6 of the act of March 3, 1869 (15 ibid., 318), contained the requirement that there should be no more promotions or appointments in the staff of the Army until otherwise directed by law, but this restriction was removed, as to the Subsistence Department, by section 3 of the act of June 23, 1874, which reorganized the department and fixed its commissioned strength at one brigadier-general, two colonels, three lieutenant-colonels, eight majors, and twelve captains. By the act of February 12, 1895 (28 ibid., 656), the number of captains was reduced to eight. The requirement of the act of March 3, 1883 (22 ibid., 457), authorizing captains in this department to be appointed from civil life was repealed by the act of August 6, 1894 (28 ibid., 234), and appointments to the lowest grade are now required to be made from the line of the Army. The act of June 30, 1882 (22 ibid., 118), and subsequent acts of appropriation have made provision for the payment of $100 additional pay to officers detailed from the line to perform the duties of acting commissaries of subsistence. A corps of post commissary-sergeants was added to the department by the act of March 3, 1873 (17 ibid., 485; section 1142, Revised Statutes). They were to be appointed by the Secretary of War in such number as the service might require, but were not to exceed one for each military post.

By section 2 of the act of July 7, 1898 (30 ibid., 715), there were added to the strength of the department during the war with Spain eight majors and twelve captains of volunteers, and the two assistants to the Commissary-General of Subsistence and the officers in charge of important depots were given one grade of rank and pay in addition to that actually held by them; such increase, however, was not to exceed the rank of colonel in any case, and was to continue for a period not exceeding one year after the close of the existing war.

By section 17 of the act of February 2, 1901 (31 Stat. L., 752), the permanent strength of the department was fixed at one Commissary-General with the rank of brigadier-general, three assistant commissaries-general with the rank of colonel, four deputy commissaries-general with the rank of lieutenant-colonel, nine commissaries with the rank of major, and twenty-seven commissaries with the rank of captain mounted; the existing force of commissary-sergeants was recognized and continued in service and were thereafter to be designated as post commissary-sergeants. A system of details was also established by the operation of which the permanent commissioned personnel of the department will be gradually replaced, as vacancies occur, by officers detailed from the line of the Army for duty in the Subsistence Department.

The army ration.—The army ration, as established by the act of April 30, 1790 (1 Stat. L., 121); section 8, act of March 3, 1795 (ibid., 434); and section 13, act of May 30, 1796 (ibid., 484); consisted of 1 pound of fresh or salt beef, or three-quarters of a pound of pork or bacon; 1 pound of flour, one-half a gill of spirits, and to each 100 rations 1 quart of salt, 2 quarts of vinegar, 2 pounds of soap, and 1 pound of candles. By section 3 of the act of June 7, 1794 (ibid., 242); section 6, act of January 2, 1795 (ibid., 400), and section 11, act of May 30, 1796 (ibid., 484), sundry additions were made to meat, bread, and seasoning components of the ration in the case of troops employed on frontier service. The ration was increased by section 6 of the act of July 16, 1798 (ibid., 605), so as to consist of 1¼ pounds of fresh or salt beef, or three-quarters of a pound of pork or bacon; 1 pound and 2 ounces of flour; 1 gill of spirits; and to each 100 rations 2 quarts of salt, 2 quarts of vinegar, 4 pounds of soap, and 1½ pounds of candles; and the ration, as thus constituted, was made permanent by section 6 of the act of March 16, 1802 (2 ibid., 134). By section 22 of the act of March 3, 1799 (1 ibid., 749), the regular spirit ration was reduced to one-half gill, and commanding officers were authorized to make extra issues of spirits, at the rate of one-half gill per ration, "in cases of fatigue service or other extraordinary occasions."[1] The spirit ration was replaced by coffee and sugar at the rate of 6 and 12 pounds, respectively, per hundred rations, by section 17 of the act of July 5, 1838 (5 ibid., 256), and the ration of coffee and sugar was increased to 10 and 15 pounds, respectively, by section 4 of the act of June 21, 1860 (12 ibid., 68); by section 10, act of July 5, 1862 (ibid., 510), the extract of coffee was authorized to be issued in lieu of the coffee and sugar ration.[1] A vegetable component, consisting of 15 pounds of beans or peas, or 10 pounds of rice or hominy, was added to the ration by Executive order, under the authority conferred by section 8 of the act of April 14, 1818 (3 ibid., 426), paragraph —, Army Regulations of 1847). An increase in the components of the ration to the following extent was authorized by section 13 of the act of August 3, 1861 (12 ibid., 289); the ration of bread or flour was increased to 22 ounces, and an alternate issue of 1 pound of hard bread authorized, and a vegetable ration, to consist of 1 pound of potatoes, was required to be issued "at least three times per week, if practicable." This increase was to terminate at the close of the war, when the ration was to be reduced to the articles and quantities as authorized by law or regulation on July 1, 1861. Pepper was added as one of the seasoning components, at the rate of 4 ounces to the hundred rations, by section 11, act of March 3, 1863 (12 ibid., 744), and section 2 of the act of June 20, 1864 (13 ibid., 144), contained the requirement that the ration should thereafter be the same as provided by law and regulation on the 1st day of July, 1861, with the addition of the pepper ration authorized by the act of March 3, 1863; the components of beans (or peas), or rice (or hominy), at the rate of 15 and 10 pounds, respectively, to the hundred rations, having been added by Executive regulation, were included in the operation of the act of July 1, 1864, and became part of the authorized ration. By section 5 of the act of June 16, 1890 (26 ibid., 158), 1 pound of vegetables was added to the ration, "the proportion to be fixed by the Secretary of War."

---

[1] Issues of spirits, as a component part of the ration, were discontinued by Executive order in 1832 (General Orders No. 100, A. G. O., 1832), and an issue of coffee and sugar was substituted therefor at the rate of 4 pounds of coffee and 8 pounds of sugar to the hundred rations.

By the act of March 2, 1819 (3 Stat. L., 488), an "extra gill of whisky or spirits" was allowed to enlisted men engaged in the construction of fortifications or the execution of surveys, but by the act of May 19, 1846 (9 Stat. L., 14), this ration was allowed to be commuted in money. Upon the discontinuance of the spirit ration in 1838, section 22 of the act of March 3, 1799 (1 Stat. L., 754), became operative, which authorized the issue of spirits "in case of fatigue service or other extra occasions." This placed the spirit ration upon the basis of an extra issue; such issues, therefore, being discretionary with the Executive. They were discontinued by General Orders No. 120, War Department, of 1865.

CHAPTER XX.

THE PAY DEPARTMENT.[1]

Par.
792–794. Organization.
795–797. Promotions, transfers, details.
798. Renewal of bonds.
799–801. Duties.
802, 803. Payments to troops.
804. Command.
805, 806. Clerks to paymasters.
807–825. Pay of commissioned officers.
826–829. Pay during absence.
Par.
830, 835. Commutation of quarters.
836. Payments to officers.
837–849. Travel expenses, mileage.
850, 851. Travel pay on discharge.
852–856. Stoppages.
857–861. Payments to matrons and nurses.
862–888. Payments to enlisted men.
889–898. Stoppages and deductions.

ORGANIZATION.

Composition. Feb. 2, 1901, s. 21, v. 31, p. 754. **Sec. 1182, R. S.**

792. The Pay Department shall consist of one Paymaster-General with the rank of brigadier-general, three assistant paymasters-general with the rank of colonel, four deputy-paymasters-general with the rank of lieutenant-colonel, twenty paymasters with the rank of major, and twenty-five paymasters with the rank of captain mounted.[2] *Sec. 21, act of February 2, 1901 (31 Stat. L., 754).*

Additional paymasters. July 5, 1838, c. 162, s. 25, v. 5, p. 259. **Sec. 1184, R. S.**

793. When volunteers or militia are called into the service of the United States, and the officers of the Paymaster's Department are not deemed by the President sufficient for the punctual payment of the troops, he may appoint, by and with the advice and consent of the Senate, and add to said corps as many paymasters, to be called additional paymasters with the rank of major, not exceeding one for every two regiments of volunteers or militia, as he may deem necessary.

---

[1] For a note containing the statutory history of the Pay Department, see end of chapter.

[2] Section 21 of the act of February 2, 1901 (31 Stat. L., 754), contains the requirement that "all vacancies in the grade of colonel and lieutenant-colonel created or caused by this section shall be filled by promotion according to seniority, as now prescribed by law, and no more appointments to the grade of major and paymaster shall be made until the number of majors and paymasters is reduced below twenty: *And provided,* That persons who have served in the Volunteer Army since April twenty-first, eighteen hundred and ninety-eight, as additional paymasters may be appointed to positions in the grade of captain created by this section. So long as there remain surplus majors an equal number of vacancies shall be held in the grade of captain, so that the total number of paymasters authorized by this section shall not be exceeded at any time." For requirements of law in respect to appointments in this department as it existed prior to the approval of the act of February 2, 1901, see section 7 of the act of March 2, 1899 (30 Stat. L., 979). For a statutory extension of the field of selection, as indicated in section 21 of the act of February 2, 1901, see the act of March 2, 1901, par. 578, *ante.*

Service to be temporary. July 5, 1838, c. 162, s. 25, v. 5, p. 259. Sec. 1185, R. S.

794. Additional paymasters shall be retained in service only so long as they may be required for the payment of volunteers and militia, as provided herein.

PROMOTIONS AND TRANSFERS.

Promotions. Feb. 2, 1901, s. 26, v. 31, p. 755.

795. So long as there remain any officers holding permanent appointments in the * * * Pay Department * * * including those appointed to original vacancies in the grades of captain and first lieutenant under the provisions of sections sixteen, seventeen, twenty-one, and twenty-four of this act, they shall be promoted according to seniority in the several grades, as now provided by law,[1] and nothing herein contained shall be deemed to apply to vacancies which can be filled by such promotions, or to the periods for which the officers so promoted shall hold their appointments. *Sec. 26, act of February 2, 1901 (31 Stat. L., 755).*

Details. *Ibid.*

796. When any vacancy, except that of the chief of the department or corps, shall occur, which can not be filled by promotion as provided in this section, it shall be filled by detail from the line of the Army, and no more permanent appointments shall be made in these departments or corps. *Ibid.*

The same. *Ibid.*

797. Such details shall be made from the grade in which the vacancies exist, under such system of examination as the President may, from time to time, prescribe.[2] *Ibid.*

Renewing bonds of paymasters. Mar. 2, 1849, c. 80, v. 9, p. 350. Sec. 1192, R. S.

798. All disbursing officers of the Pay Department shall renew their bonds, or furnish additional security, at least once in four years, and as much oftener as the President may direct.[3]

DUTIES.

Duties of Paymaster-General. Mar. 16, 1802, c. 9, s. 16, v. 2, p. 135. Sec. 1186, R. S.

799. The Paymaster-General shall perform the duties of his office under the direction of the President.

Duties of deputy paymasters-general. Mar. 3, 1847, c. 61, ss. 12, 22, v. 9, p. 185; July 19, 1848, c. 104, s. 3, v. 9, p. 247; Mar. 2, 1849, c. 80, v. 9, p. 350; July 28, 1866, c. 299, s. 18, v. 14, p. 335. Sec. 1187, R. S.

800. The deputy paymasters-general shall, in addition to paying troops, superintend the payment of armies in the field.

---

[1] For statutory regulations respecting examinations for promotion, see the title *Examinations for Promotion*, in the chapter entitled THE STAFF DEPARTMENTS.

[2] For statutory regulations respecting details to the staff, see the title *Details to the Staff* in the chapter entitled THE STAFF DEPARTMENTS.

[3] For general provisions respecting bonds of disbursing officers, see the chapters entitled THE TREASURY DEPARTMENT and THE STAFF DEPARTMENTS.

801. The paymasters and additional paymasters shall pay the regular troops, and shall pay all other troops in the service of the United States, when required to do so by order of the President.[1]

Duties of paymasters.
Apr. 24, 1816, c. 69, s. 4, v. 3, p. 298; July 14, 1832, c. 224, s. 4, v. 4, p. 582; July 5, 1838, c. 162, s. 25, v. 5, p. 259.
Sec. 1188, R.S.

PAYMENTS TO TROOPS.

802. The Army shall be paid in such manner that the arrears shall at no time exceed two months, unless circumstances shall render further arrears unavoidable.[2]

Payments to troops.
Mar. 16, 1802, c. 9, s. 13, v. 2, p. 135.
Sec. 1189, R.S.

803. The Secretary of War is also authorized to arrange for the payment of the enlisted men serving at posts or places where no paymaster is on duty by check or by currency, to be sent to them by mail or express, at the expense and risk of the United States.[3] *Act of February 27, 1893 (27 Stat. L., 175).*

Payment of enlisted men by check, etc.
Feb. 27, 1893, v. 27, p. 175.

804. Officers of the Pay Department shall not be entitled, in virtue of their rank, to command in the line or in other staff corps.[4]

Right of command.
Mar. 3, 1847, c. 61, s. 13, v. 9, p. 185.
Sec. 1183, R.S.

---

[1] Paymasters of the Army are the financial agents of the Government, and their disbursements, represented by vouchers, are examined and scrutinized by the Comptroller, whose duty it is finally to determine whether or not any particular disbursement shall be credited to the officer. In charging an officer, or refusing him credit for erroneous disbursements, the question of proper care invariably enters into consideration in arriving at a decision. The right to determine that question is a most essential feature of the functions of the Comptroller. 3 Dig. 2d Compt. Dec., par. 8.

[2] Troops will be paid every month unless circumstances prevent, in which case the paymaster charged with the payment will immediately report the facts through his chief paymaster to the Paymaster-General. Par. 1502, A. R., 1901.

[3] Payments will be made as soon after the close of each month as practicable:

(1) By paymasters in person; or

(2) By check to be sent by registered mail or express, or currency shipped by express.

The troops at posts where paymasters are stationed and others in their immediate vicinity, to be designated in instructions issued from the Adjutant-General's Office, will be paid by paymasters in person.

For posts at which payments are not required to be made in person, the paymaster will transmit the pay due in one or more of the following ways:

(1) By individual check, payable to the order of each man for the exact amount due.

(2) By enclosing in a separate sealed envelope the exact amount in currency due each soldier, with his name and the amount inclosed marked thereon. Par. 1503, ibid.

Duplicate pay rolls will be duly signed by the men, and forwarded by the commanding officer by mail to the paymaster who has been designated by the department commander to pay the command. Par. 1505, ibid. For regulations respecting the payment of troops by check see paragraphs 1502–1527 Army Regulations of 1901.

A paymaster of the Army who alleges that he inclosed certain sums of money in a package transmitted by him to an officer for the payment of troops, which sums were not found in the package when received, the seals being unbroken, is not entitled to credit therefor. 6 Compt. Dec., 940.

A soldier of a company which performed duty usually performed by engineer soldiers, but which was regularly mustered and paid as a company of infantry, is not entitled to pay as an engineer soldier. Ibid., 25.

[4] An officer of the Pay or Medical Department can not exercise command, except in his own department; but by virtue of his commission he may command all enlisted men like other commissioned officers. Par. 18, A. R., 1901.

CLERKS TO PAYMASTERS.

Paymasters' clerks. Apr. 24, 1816, c. 69, s. 3, v. 3, p. 297; July 5, 1838, c. 162, s. 20, v. 5, p. 259; June 20, 1864, c. 145, s. 10, v. 13, p. 145. June 30, 1882, v. 22, p. 118. Sec. 1190, R. S.

805. Paymasters and additional paymasters shall be allowed a capable noncommissioned officer or private as clerk. When suitable noncommissioned officers or privates can not be procured from the line of the Army, they are authorized, by and with the approbation of the Secretary of War, to employ citizens as clerks, at a salary of fourteen hundred dollars a year.[1] *Act of June 30, 1882 (22 Stat. L., 118).*

Pay of clerks. May 26, 1900, v. 31, p. 209.

806. Hereafter the pay of army paymasters' clerks who have served as such over fifteen years shall be one thousand eight hundred dollars per annum; the pay of army paymasters' clerks who have served as such over ten years shall be one thousand six hundred dollars each per annum; the pay of army paymasters' clerks who have served as such over five years shall be one thousand five hundred dollars each per annum; the pay of other army paymasters' clerks shall be one thousand four hundred dollars each per annum. *Act of May 26, 1900 (31 Stat. L., 209).*

LIBRARY OF THE UNIVERSITY OF CALIFORNIA

PAY OF COMMISSIONED OFFICERS.

807. Rates of pay.
808. The same, militia and volunteers.
809. Principal assistant to Chief of Ordnance.
810. Mounted pay.
811. No increase for brevet rank.
812–813. Advances of pay.
814. Increased pay for higher command.
815. The same, restriction.
816. The same, foreign service.
817. Allowances, restriction.
818–823. Longevity pay.
823 *a*. Pay of volunteers.
824. Retired pay.
825. The same, officers wholly retired.
826–828. Pay during absence.
829. Absence without leave.

Rates of pay to officers. July 15, 1870, s. 24, v. 16, p. 320; July 24, 1876, v. 19, p. 97. Sec. 1261, R. S.

807. The officers of the Army shall be entitled to the pay[2] herein stated after their respective designations:[3]

The General, thirteen thousand five hundred dollars a year.[4]

The Lieutenant-General, eleven thousand dollars a year.

Major-general, seven thousand five hundred dollars a year.

---

[1] For travel allowances of paymasters' clerks see paragraph 847, *post.* Salaries of clerks to paymasters are now graded according to length of service. See next paragraph for rates of pay for periods of service.

[2] Pay is the monthly pecuniary compensation of officers and soldiers of the Army, as fixed by sections 1261, 1280, etc., Revised Statutes. It is quite distinct from "allowances." Dig. Opin. J. A. G., par. 1894; X Opin. Att. Gen., 285. The right to pay begins and ends with the period of legal service. Except by special authority of Congress an officer or soldier can not be paid for military service rendered before appointment, enlistment, or muster in. See note 3 to paragraph 821, *post.* See also the chapter entitled COMMISSIONED OFFICERS.

[3] For longevity pay, see paragraph 818, *post.*

[4] This office has ceased to exist as a grade of rank in the military establishment.

Brigadier-general, five thousand five hundred dollars a year.

Colonel, three thousand five hundred dollars a year.

Lieutenant-colonel, three thousand dollars a year.

Major, two thousand five hundred dollars a year.

Captain, mounted, acting judge-advocate, and chaplain of volunteers, two thousand dollars a year.[1]

Captain, not mounted, and chaplain, eighteen hundred dollars a year.

Squadron and battalion adjutants, cavalry, infantry, and engineers, eighteen hundred dollars a year.[2]

First lieutenant, mounted, sixteen hundred dollars a year.

Squadron and battalion quartermaster and commissary, cavalry, infantry, and engineers, sixteen hundred dollars a year.[2]

First lieutenant, not mounted, fifteen hundred dollars a year.

Second lieutenant, mounted, and veterinarian, cavalry and artillery,[3] fifteen hundred dollars a year.

Second lieutenant, not mounted, fourteen hundred dollars a year.

Aid and military secretary to the lieutenant-general, the pay of lieutenant-colonel.[4]

Aid to major-general, two hundred dollars a year, in addition to pay of his rank.

Aid to brigadier-general, one hundred and fifty dollars a year, in addition to pay of his rank.

Acting assistant commissary, one hundred dollars a year, in addition to pay of his rank.[5]

---

[1] Section 15, act of February 2, 1901 (31 Stat. L., 751); act of July 8, 1898. (30 ibid., 729).

[2] Sections 2, 10, and 11, act of February 2, 1901 (31 Stat. L., 748 and 750).

[3] Section 2, act of May 12, 1898 (30 Stat. L., 406); section 20, act of February 2, 1901 (31 ibid., 753).

[4] Section 1097, Revised Statutes; joint resolution No. 9, February 5, 1895 (28 Stat. L., 968).

[5] Higher compensation for staff service is given by law in several forms, as follows:

1. In the form of increased rank, accompanied by the pay or allowances of a higher grade in lieu of the pay and allowances of the grade which the officer holds under his commission, as in the case a lieutenant, or captain dismounted detailed as an acting judge-advocate, or as in the case of the superintendent and commandant of cadets at the Military Academy.

2. In the form of a higher salary, without change in rank or grade, as in the case of a lieutenant detailed as regimental adjutant or quartermaster, prior to March 2, 1899 (sec. 1261, R. S.), or as is the case with certain assistant professors and instructors of tactics at the Military Academy.

3. In the form of a specific sum allowed by law, in addition to the pay and allowances of the grade or rank held by the officer under his commission, as in the case of aids to major-generals or brigadier-generals. See 5 Compt. Dec., 971, 975.

The positions of acting judge-advocate and aid to major-general in the Army are

Ordnance storekeeper, in office of Chief of Ordnance, the pay of major. *Acts of May 1, 1882 (22 Stat. L., 52); June 6, 1896 (29 ibid., 256).*

Military storekeeper, the pay of captain, mounted.[1] *Act of July 1, 1898 (30 Stat. L., 571).*

Contract and dental surgeon, not to exceed eighteen hundred dollars a year.[2]

Officers of volunteers and militia.
April 22, 1898, s. 12, v. 30, p. 361.

808. Officers * * * of the Volunteer Army, and of the militia of the States, when in the service of the United States, shall be in all respects on the same footing as to pay, allowances, and pensions as that of officers * * * of corresponding grades in the Regular Army. *Sec. 12, act of April 22, 1898 (30 Stat. L., 361).*

Pay of principal assistant in Ordnance Bureau.
Feb. 27, 1877, v. 19, p. 243.
Sec. 1279, R. S.

809. The principal assistant in the Ordnance Bureau shall receive compensation, including pay and emoluments, not exceeding that of a major of ordnance.[3]

Mounted pay.
Feb. 27, 1877, c. 69, v. 19, p. 243.
Sec. 1270, R. S.

810. Officers of the Army and of volunteers assigned to duty which requires them to be mounted shall, during the time they are employed on such duty, receive the pay, emoluments, and allowances of cavalry officers of the same grade, respectively.[4]

---

incompatible, and an officer is not entitled to the additional pay of both positions at the same time. 5 Compt. Dec., 971.

Lieutenants serving as regimental (squadron and battalion) commissaries are not entitled to additional pay as acting commissaries of subsistence. 5 Compt. Dec., 761. Captains, other than regimental commissaries, are entitled to additional pay. Dig. Opin. J. A. G., par. 1910.

[1] This office has ceased to exist as a grade of rank on the active list of the Army.

[2] Section 2, act of May 12, 1898 (30 Stat. L., 406); section 19, act of February 2, 1901 (31 ibid., 753). The three contract dental surgeons first appointed are entitled to $60 per month additional pay for the performance of the duties prescribed in that section.

[3] And the Ordnance storekeeper on duty as disbursing officer and assistant to the Chief of ordnance. See paragraph 1159, note, and paragraph 1160, *post.*

[4] A mounted officer is one who, by statute, regulations, or army organization, is "required" to be mounted at his own expense. Harold *v.* U. S., 23 Ct. Cls., 295. An officer of a battery designated by the President as a "light battery" is entitled to mounted pay from the date of such designation. Ibid. Officers are not assigned to duty "requiring them to be mounted" when no order or authorization requiring them to mount themselves has been issued by the War Department, and they have merely been riding Government horses, by permission, and have been furnished with Government equipments. Forbes *v.* U. S., 17 Ct. Cls., 32. Nor are officers so assigned within the meaning of the act of February 12, 1877, where they are simply mounted on Government horses captured from Indians, and do not furnish, at their own expense horses, saddles, bridles, sabers, pistols, spurs, and other cavalry equipments. Ibid.; Carter *v.* U. S., 22 ibid., 73; see also Eskridge *v.* U. S., 30 ibid., 290.

The following officers, in addition to those whose pay is fixed by law, are entitled to pay as mounted officers: Officers of the staff corps below the rank of major, officers serving with troops of cavalry, officers of a light or siege battery duly organized and equipped, authorized aids duly appointed, officers serving as military attachés to the embassies and legations of the United States at foreign capitals, officers serving with companies of mounted infantry, and officers on duty which requires them to be mounted and which is so certified to by the Secretary of War or the department or corps commander on their first pay vouchers while on such duty, the certifi-

811. Brevets conferred upon commissioned officers shall not entitle them to any increase of pay.

Brevets.
Mar. 3, 1863, c. 82, v. 12, p. 758; Mar. 3, 1865, c. 79. s. 9, v. 13, p. 488.
Sec. 1264, R.S.

ADVANCES OF PAY.

812. The President may * * * direct such advances as he may deem necessary and proper to persons in the naval and military service employed on distant stations where the discharge of the pay and emoluments to which they may be entitled can not be regularly effected.[1]

Advances of money.
Sec. 3648, R.S.

813. Troops about to embark for service in the Philippine Islands may, in the discretion of the Secretary of War, be paid one month's wages in advance prior to embarkation.[2] *Act of July 7, 1898 (30 Stat. L., 720).*

Advance to troops embarking for Philippine Islands.
July 7, 1898, v. 30, p. 720.

---

cate being cited by the officers on their subsequent vouchers. Officers ceasing to draw mounted pay will file with the last pay voucher a copy of the order relieving them from duty which required them to be mounted. Acting judge-advocates of military departments, duly detailed, are entitled while so serving to the rank, pay, and allowances of captains of cavalry. Par. 1450, A. R., 1901.

The act of July 17, 1862 (12 Stat. L., 594), allowed to officers "assigned to duty which required them to be mounted" certain increased pay. So section 1261, Revised Statutes, entitles captains and lieutenants, when "mounted," to receive respectively $200 and $100 per annum of pay more than when "not mounted." *Held*, that to entitle officers to the increase of pay under these statutes it was not, and is not, essential that the duties required of them should make it absolutely necessary that they should be mounted, but that it was, and is, sufficient if these duties were, or are, such as are usually and appropriately performed by mounted officers, and such as can not be performed effectively or without material embarrassment and inconvenience to the service except by such officers (note in this connection the construction in Griswold *v.* Hepburn, 2 Duvall, 20, of the provision in Art. I, sec. 8 § 18 of the Constitution, that Congress shall have the power "to make all laws which shall be *necessary*," etc., for the execution of its special powers—as meaning not indispensable but appropriate and conducive to the purpose); and further that the certificate of the proper commander of an officer (as of the Chief Signal Officer in a case of an officer engaged in signal duty, or of the Superintendent at West Point in a case of an acting quartermaster stationed at that post), that the duties of the officer properly required (in the sense above indicated) that he should be mounted, would (the Secretary of War approving) be sufficient to entitle him to receive the additional pay. *Held*, that a captain or lieutenant detailed as a professor in a college, under section 1225, was not entitled to mounted pay. Dig. Opin. J. A. G., par. 1909.

Where the duty to which an infantry officer is assigned, in the opinion of the department commander, requires him to be mounted, and such officer furnishes horses and forage, he is entitled to be paid as a mounted officer until he is notified of the changed opinion of the department commander. Eskridge *v.* U. S., 30 Ct. Cls., 290.

An officer of a battery of artillery, designated by the President as a mounted battery, is entitled to mounted pay from the date of such designation, though the battery was not equipped until a later date. Harrold *v.* U. S., 23 Ct. Cls., 295.

A captain detailed as regimental adjutant or regimental quartermaster under section 2 of the act of March 2, 1899 (30 Stat. L., 977), is entitled to the pay of a captain mounted. 5 Compt. Dec., 761.

[1] An advance of public money made by a paymaster of the Army to an officer ordered to a distant station, when made by direction of the President, as provided by section 3648 of the Revised Statutes, to provide for the pay of such officer for a future period, is not a payment for services for the correctness of which the paymaster is held responsible, but is an advance of public money to the officer in question, for which he, and not the paymaster, is accountable to the United States. 4 Compt. Dec., 250.

[2] The act of May 2, 1898 (30 Stat. L., 420) had contained the same provision.

INCREASED PAY TO OFFICERS EXERCISING COMMANDS HIGHER THAN THEIR GRADES.

Pay of grade appropriate to command exercised in time of war.
Sec. 7, Apr. 16, 1898, v. 30, p. 364.

814. In time of war every officer serving with troops operating against an enemy who shall exercise, under assignment in orders issued by competent authority, a command above that pertaining to his grade shall be entitled to receive the pay and allowances of the grade appropriate to the command so exercised: *Provided*, That a rate of pay exceeding that of a brigadier-general shall not be paid in any case by reason of such assignment.[1] *Sec. 7, act of April 26, 1898 (30 Stat. L., 364).*

---

[1] Under section 7 of the act of Congress approved April 26, 1898, an officer is not entitled to the pay and allowances of the grade appropriate to a command exercised by him above that pertaining to his grade except when "serving with troops operating against an enemy" and exercising the command of the higher grade "under assignment in orders issued by competent authority." It has been held by the Secretary of War that troops serving within the limits of the United States at a time when there is no foreign army within said limits are not operating against an enemy, notwithstanding the existence of war conditions. For the purpose of restricting assignments to command under this section to "competent authority," it has also been decided that such authority can be exercised only by the Secretary of War, or by the commanding general of an army "operating against an enemy." Circular 18, A. G. O., 1898. See also G. O. 86, A. G. O., 1898.

The command prescribed by law for an officer of the Army must be held to be the appropriate command of that grade, and such command is not subject to change by Executive order, or regulation, except as provided by law. 5 Compt. Dec., 354.

An officer of the Army who, under assignment in orders issued by his superior officer, exercises a command above that pertaining to his grade exercises such command under competent authority within the meaning of section 7 of the act of April 26, 1898. Ibid., 354.

Under section 7 of the act of April 26, 1898, an officer of the Army serving in time of war with troops operating against an enemy, who is required by the Army Regulations, upon a specified contingency, to exercise a command above that pertaining to his grade, must be regarded as exercising such "command under assignment in orders issued by competent authority," and is entitled to the pay of the higher grade. Ibid., 639.

The office of an officer of the Army and his rank are not necessarily identical. Wood *v.* U. S., 107 U. S., 414; 5 Compt. Dec., 280.

A captain in the Army while performing duty as chief quartermaster does not exercise a command within the meaning of section 7 of the act of April 26, 1898, and is not entitled to increased pay for exercising a command above that pertaining to his grade. 5 Compt. Dec., 137. A judge-advocate who is assigned by a corps commander to act as judge-advocate on his staff does not thereby acquire any higher rank and is not entitled to any additional pay. Ibid., 168.

A major of infantry who, on the assignment of the lieutenant-colonel to the command of the regiment, was assigned to the command of a battalion was not assigned to a command above that pertaining to his grade, and is not entitled to the increase of pay provided by the act of April 26, 1898, for exercising a command above that pertaining to his grade. Ibid., 862.

The fact that a major of the Army was for a time assigned to the command of a post garrisoned by two batteries of artillery does not make such a command the appropriate command of a major, and a captain assigned to such a command is not entitled to the pay of a major. Ibid., 891.

There is no law authorizing the allowance of additional pay to an enlisted man for performing the duties of a commissioned officer, and a claim for such pay can not be allowed. 4 Compt. Dec., 120.

A second lieutenant of the Army who exercised the command of a first lieutenant did not "exercise a command above that pertaining to his grade," within the meaning of the act of April 26, 1898, and he is not entitled to the pay of the higher grade. 6 Compt. Dec., 905.

Where an officer of the Army exercised a higher command and, under section 7

815. For additional pay for increased rank when in command by competent authority, * * * dollars: *Provided*, That no part of this sum shall be used for pay of officers assigned to higher command than their rank in the Army, unless such service shall be continuous for a period of not less than three months. *Act of May 26, 1900 (31 Stat. L., 211).*

Restriction May 26, 1900, v. 31, p. 211.

INCREASED PAY FOR FOREIGN SERVICE.

816. Hereafter the pay proper of all officers and enlisted men serving beyond the limits of the States comprising the Union and Territories of the United States contiguous thereto shall be increased ten per centum for officers and twenty per centum for enlisted men over and above the rates of pay proper as fixed by law for time of peace, and the time of such service shall be counted from the date of departure from said States to the date of return thereto.[1] *Act of March 2, 1901 (31 Stat. L., 903).*

Increase for foreign service. Mar. 2, 1901, v 31, p. 903.

---

of the act of April 26, 1898, is entitled to the pay and allowances of the grade appropriate to the command so exercised, and, under section 1262, Revised Statutes, is also entitled to increased pay for length of service, such increased pay to be computed on the pay of the grade appropriate to such higher command. Ibid., 710.

[1] This enactment replaces the requirement *in pari materia* of the act of May 26, 1900. (31 Stat. L., 211.) The act of March 3, 1901 also provides that "the officers and enlisted men who have served in China at any time since the twenty-sixth day of May, nineteen hundred, shall be allowed and paid for such service the same increase of pay proper as is herein provided for." Under this statute an officer is entitled to 10 per cent increase of his pay proper for the highest grade he holds, or of the highest grade to which his pay and allowances are lawfully assimilated, but such increase of pay does not operate to increase his pay for length of service. See 6 Compt. Dec., 944.

The act does not make any change in the regular pay or allowance of the Army, but makes provision for a special or extra allowance to officers and enlisted men of the Army while they are serving in the places named in the act. It obviously applies only to service rendered on and after the date of the act.

The provisions of the various laws, to wit, section 11, act of June 20, 1864 (13 Stat. L., 145), section 1265, Revised Statutes, act of May 8, 1874 (18 Stat. L., 43), and act of July 29, 1876 (19 Stat. L., 102), authorizing leaves of absence to be allowed to officers for specified periods "without deduction of pay or allowances" have not been construed to entitle an officer while on leave to allowances the payment of which was conditioned upon the performance of some particular service, such as payment of $100 a year as acting assistant commissary under section 1261, Revised Statutes, or pay for exercising a higher command under section 7, act of April 26, 1898 (30 Stat. L., 365).

The 10 per cent increase on pay proper being allowed by the act only to officers serving in the places named therein, I am of the opinion that an officer on duty in one of the places named in the act, who is relieved from duty and given a sick leave or an ordinary leave, is not entitled to the 10 per cent increase in computing his pay after the date on which he leaves the place where the increased pay for service therein is authorized by law. 6 Comp. Dec., 948.

The provisions of the act in respect to the 10 per cent increase therein provided were special and peculiar, and while the 10 per cent increase would undoubtedly be included in the term "pay" as to officers serving in places named in the act, it would not be included in either of the terms "pay" or "allowances" as to officers not serving in such places.

In all the laws relating to contract surgeons they are clearly distinguished from officers of the Army. See sections 1 and 2, act of May 12, 1898 (30 Stat. L., 406); section 7, act of March 2, 1899, to increase the efficiency of the Army (30 Stat. L., 979), and the acts providing for mileage to officers traveling without troops and to con-

Allowances. July 15, 1870, c. 294, s. 24, v. 16, p. 320. Sec. 1269, R.S.

817. No allowances shall be made to officers in addition to their pay except as hereinafter provided.[1]

LONGEVITY PAY.

Service pay. July 15, 1870, c. 294, s. 24, v. 16, p. 320. Sec. 1262, R.S.

818. There shall be allowed and paid to each commissioned officer below the rank of brigadier-general, including chaplains and others having assimilated rank or pay, ten per centum of their current yearly pay for each term of five years of service.[2]

Not to exceed 40 per cent of yearly pay. July 15, 1870, c. 294, s. 24, v. 16, p. 230. Sec. 1263, R.S.

819. The total amount for such increase for length of service shall in no case exceed forty per centum on the yearly pay of the grade as provided by law.

Maximum of colonel's and lieutenant-colonel's pay. July 15, 1870, c. 294, s. 24, v. 16, p. 320. Sec. 1267, R.S.

820. In no case shall the pay of a colonel exceed four thousand five hundred dollars a year, or the pay of a lieutenant-colonel exceed four thousand dollars a year.

Service for longevity pay, how computed. Sec. 7, June 18, 1878, v. 20, p. 150.

821. On and after the passage of this act, all officers of the Army of the United States who have served as officers in the volunteer forces during the war of the rebellion, or as enlisted men in the armies of the United States, regular or volunteer, shall be, and are hereby, credited with the full time they may have served as such officers and as such enlisted men in computing their service for longevity pay and retirement.[3] *Sec. 7, act of June 18, 1878 (20 Stat. L., 150).*

---

tract surgeons, acts of January 5, 1899, and March 3, 1899 (30 Stat. L., 775, 1068), and act of May 26, 1900 (31 Stat. L., 210), and section 1342, Revised Statutes.

It has been uniformly held that a contract surgeon, also called acting assistant surgeon, is neither an officer nor an enlisted man and is not a member of the Army, but has the status of a civilian employee. See 26 Ct. Cls., 302; Dig. 2d Compt. Dec., vol. 3, sections 929, 932; 4 Compt. Dec., 631, 632; 5 Compt. Dec., 86, 275; 6 Compt. Dec., 356, 376, 403.

As a contract surgeon is neither an officer nor an enlisted man he is not entitled to increased pay under the act of May 26, 1900, *supra*. Dec. Compt. Treas., Oct. 19, 1900, Cir. 42 A. G. O., 1900.

[1] Pay is the fixed and direct amount given by law; allowances or emoluments are indirect or contingent remuneration; both are compensation. Sherburne *v.* U. S., 16 Ct. Cls., 491. See also note 2 to paragraph 807, *ante.*

[2] Longevity pay is founded upon the equivalent of increased judgment and capacity acquired by the experience of continued service. Brown *v.* U. S., 18 Ct. Cls., 545. Acts authorizing longevity pay are remedial statutes, and officers are entitled to a liberal interpretation of them, the language used being given as broad a meaning as Congress may be presumed to have intended. Hendee *v.* U. S., 22 Ct. Cls., 134; 19 ibid., 153.

[3] An officer once in actual service, under color of office, is entitled to have the time credited to him in the computation of longevity pay. Gould *v.* U. S., 19 Ct. Cls., 593. The time of actual service is to be credited to an officer in the computation of his longevity pay, without regard to a defect in his title to the office. Palen *v.* U. S., 19 ibid., 389. Service as chaplain prior to the act of March 2, 1867 (14 Stat. L., 423), can be reckoned in computing longevity pay, chaplains being in the military service prior to that date. U. S. *v.* LaTourette, 151 U. S., 572. Service as a contract surgeon can not be reckoned in such computation. Byrnes *v.* U. S., 26 Ct. Cls., 302; Hendee *v.* U. S., 124 U. S., 309. Before the passing of the act of July 28, 1866, as well as afterwards, the corps of cadets of the Military Academy was a part of the

822. The actual time of service in the Army or Navy, or both, shall be allowed all officers in computing their pay. *Act of February 24, 1881 (21 Stat. L., 346).*

Service in Navy to be counted.
Feb. 24, 1881. v. 21, p. 346.

823. From and after the first day of July, eighteen hundred and eighty-two, the ten per centum of increase for length of service allowed to certain officers by section 1262 of the Revised Statutes[1] shall be computed on the yearly pay of the grade fixed by sections twelve hundred and sixty-one[2] and twelve hundred and seventy-four[3] of the Revised Statutes. *Act of June 30, 1882 (22 Stat. L., 118).*

To be computed on yearly pay of grade.
June 30, 1882, v. 22, p. 118.

PAY OF VOLUNTEERS.

823*a*. All officers and enlisted men of the Volunteer Army, and of the militia of the States when in the service of the United States, shall be in all respects on the same footing as to pay, allowances, and pensions as that of officers and enlisted men of corresponding grades in the Regular Army.[4] *Sec. 12, act of April 22, 1898 (30 Stat. L., 363).*

Pay, allowances, etc., of volunteers and militia.
S. 12, April 22, 1898, v. 30, p. 363.

RETIRED OFFICERS.

824. Officers retired from active service shall receive seventy-five per centum of the pay of the rank upon which they are retired.[5]

Roberts's Case, 10 Ct. Cls., 283.

Pay of retired officers.
July 15, 1870, c. 294, s. 24, v. 16, p. 320; Mar. 3, 1875; c. 178, v. 18, p. 512, **Sec. 1274, R. S.**

Army of the United States, and a person serving as a cadet was serving in the Army; and the time during which a person has served as a cadet was, therefore, actual time of service by him in the line of the Army. Morton *v.* U. S., 112 U. S., 1, 7.

In computing longevity pay, service performed as cadets at the Military or Naval Academy, or as enlisted men of the Army or Navy, will be counted. Par. 1311, A. R., 1895.

[1] Paragraph 818, *ante.*

[2] Paragraph 807, *ante.*

[3] Paragraph 824, *post.*

[4] Section 1292 of the Revised Statutes contains the requirement that "in all matters relating to the pay and allowances of officers and soldiers of the Army of the United States, the same rules and regulations shall apply to the Regular Army and to volunteer forces mustered into the service of the United States for a limited period."

The date on which a volunteer officer, appointed by the President, formally accepts his appointment should be considered as the date of the commencement of his military service. No such officer should be recognized as having been in the military service of the United States, under his appointment, because of any service that may have been rendered by him prior to his formal acceptance of that appointment.—Decision Sec. War, June 28, 1899. Circular 32, A. G. O., 1899.

[5] An officer of the Army who has been retired is entitled to the pay provided for a retired officer only, even though he may not have been relieved from active duty. 5 Compt. Dec., 53. Retired officers being in the military service of the Government, the increased pay of 10 per cent for each five years' service applies to the years so passed in the service after retirement as well as before. U. S. *v.* Tyler, 105 U. S., 244, 246, and 16 Ct. Cls., 223.

An officer on the retired list to whom the "full pay and allowances of brigadier-general" has been granted by Congress is not entitled to an allowance of forage. XVII Opin. Att. Gen., 390, where, by a private act of Congress, an ex-officer is placed upon the retired list and the act directs that his retired pay shall be due and payable to him from the date of the passage of the act, his pay will begin at the date of the act and not at the date of his acceptance. 1 Compt. Dec., 172.

OFFICERS WHOLLY RETIRED.

Pay of officers wholly retired.
Aug. 3, 1861, c. 42, s. 17, v. 12, p. 290.
Sec. 1275, R. S.

825. Officers wholly retired from the service shall be entitled to receive, upon their retirement, one year's pay and allowances of the highest rank held by them, whether by staff or regimental commission, at the time of their retirement.[1]

PAY DURING ABSENCE.

Pay during absence.
Aug. 3, 1861, c. 42, s. 20, v. 12, p. 290; Mar. 3, 1863, c. 75, s. 31, v. 12, p. 736; June 20, 1864, c. 145, s. 11, v. 13, p. 145; July 15, 1870, c. 294, s. 24, v. 16, p. 320; May 8, 1874, c. 154, v. 18, p. 43; July 29, 1876, c. 239, v. 19, p. 102.

826. Officers when absent on account of sickness or wounds, or lawfully absent from duty and waiting orders, shall receive full pay; when absent with leave, for other causes, full pay during such absence not exceeding in the aggregate thirty days in one year, and half-pay during such absence exceeding thirty days in one year. When absent without leave, they shall forfeit all pay during such absence, unless the absence is excused as unavoidable.[2] U. S. *v.* Williamson, 23, Wall., 411. **Sec. 1265, R. S.**

Leaves of absence on full pay.
July 29, 1876, v. 19, p. 102.

827. All officers on duty shall be allowed, in the discretion of the Secretary of War, sixty days' leave of absence without deduction of pay or allowance: *Provided*, That the same be taken once in two years: *And provided further*, That the leave of absence may be extended to three months, if taken once only in three years, or four months if taken only once in four years.[3] *Act of July 29, 1876* (*19 Stat. L., 102*).

---

[1] The provision of section 1275, Revised Statutes, that an officer wholly retired shall receive, upon retirement, one year's pay and allowances, entitles such an officer to receive a sum equal to the total of one year's pay and all the pecuniary allowances of an officer of his rank. And *held* that the fact that an officer, at the time of being wholly retired, was under a sentence of suspension from rank and pay, did not affect his right to receive such full sum upon the retirement. Dig. Opin. J. A. G., par. 2198.

[2] Section 1265 of the Revised Statutes provides that an officer absent without leave shall forfeit all pay unless the absence is excused as unavoidable; the rule prevails whether a court-martial declares a forfeiture or not. Dodge *v.* U. S., 33 Ct. Cls., 28. The pay of an officer absent without leave is not absolutely forfeited, but only when it has been made to appear that the absence was not unavoidable. Smith *v.* U. S., 23 Ct. Cls., 452. A statement by the Adjutant-General that an officer was "absent without leave" is conclusive as to his status, and is not affected by statements made by officers of the War Department implying the belief that the officer was not responsible for his absence. 3 Dig., 2d Compt. Dec., par. 2. The act of March 3, 1863, section 1265, Revised Statutes, provides that an officer absent without leave shall forfeit his pay. If payment has been made it may be recovered. Lapse of time does not preclude the Government from charging an officer with a payment made to him contrary to law. Crowell *v.* U. S., 22 Ct. Cls., 69.

[3] Section 1265 of the Revised Statutes was replaced by the act of May 8, 1874 (18 Stat. L., 43), which provided that "all officers on duty west of a line drawn north and south through Omaha City and north of a line drawn east and west upon the southern boundary of Arizona shall be allowed sixty days' leave of absence without deduction of pay or allowances: *Provided*, That the leave is taken but once in two years: *And provided further*, That the leave may be extended to three months if taken only once in three years, or four months if taken once only in four years." This statute was superseded by the act of July 29, 1876, above cited. For statutory pro-

The same. Dates of commencement and termination. Mar. 2, 1901, v. 31, p. 902.

828. Leaves of absence which may be granted officers of the Regular and Volunteer Army serving in Alaska or without the limits of the United States, for the purpose of returning thereto, or which may have been granted such officers for such purpose since the thirteenth day of October, eighteen hundred and ninety-eight, shall be regarded as taking effect on the dates such officers reached or may have reached the United States, respectively, and as terminating, or as having terminated, on the respective dates of their departure from the United States in returning to their commands as authorized by an order of the Secretary of War, dated October thirteenth, eighteen hundred and ninety-eight.[1] *Act of March 2, 1901* (*31 Stat. L.*, *902*).

---

visions respecting leaves of absence to graduates of the Military Academy, see the chapter entitled THE MILITARY ACADEMY.

Section 31 of the act of March 3, 1863 (12 Stat. L., 736), does not apply to an officer ordered to proceed to his home and there await orders, though the order was issued at his own request. An officer "absent with leave" is at liberty to go where he will; an officer ordered to a particular place, there to await orders, must remain in that place and continue as much under orders as though assigned to any ordinary military duty. Williamson *v.* U. S., 10 Ct. Cls. 50, and 23 Wall., 411; Phisterer *v.* U. S., 11 Ct. Cls. 98, and 94 U. S., 219.

An officer ordered home to await orders may change his place of residence, reporting the fact to the War Department. Phisterer *v.* U. S., 12 Ct. Cls. 98. An officer ordered home to await orders can not make his home ambulatory by simply reporting from the places where he may chance to be. Chilson *v.* U. S., 11 Ct. Cls. 691.

[1] Leaves of absence will be granted in terms of months and days as "one month," "one month and ten days." Leave for one month, beginning on the first day of a calendar month, will expire with the last day of the month, whatever its number of days. Commencing on an intermediate day, the day will expire the day preceding the same day of the next month. The day of departure, whatever the hour, is counted as a day of duty; the day of return as a day of absence. Par. 63, A. R., 1901.

A leave of absence commences on the day following that on which the officer departs from his proper station. The expiration of his leave must find him at his post, except as indicated in paragraphs 1467 and 1484. A leave of absence granted an officer in the field, or on special duty, will take effect on the termination of the campaign, or on the completion of such duty, unless in the opinion of the department commander his services can sooner be spared, in which case it will take effect at such time as the department commander may direct. In all other cases an officer is expected to avail himself of a leave as soon as proper facilities offer, unless a specific date is stated in the order, and if unable to do so, he will report the fact to the authority granting the leave. Par. 64, ibid.

Held (1871), that an officer ordered to his home to await orders did not occupy the status of an officer on leave of absence, and was not therefore on half pay during the period of thus awaiting orders, but was entitled for such period to the full pay of his rank. Dig. Opin. J. A. G., par. 1906. This opinion was affirmed in the same case (United States *v.* Williamson) by the Court of Claims in 1873 (9 Ct. Cl. 503,) and by the Supreme Court in the next year (23 Wallace 411). But in the United States *v.* Phisterer, 4 Otto, 219, it was held that an officer ordered to his home to await orders was not entitled to *commutation for quarters and fuel*, his home not being a "station" in the sense of par. 1080, Army Regulations. See G. O. 78, Hdqrs. of Army, 1877, issued in consequence of this decision. But see the recent case of United States *v.* Lippitt, 10 Otto, 663, where the officer was ordered to the *headquarters of a military department* to await orders.

PAY DURING ABSENCE IN CONFINEMENT.

Officers and enlisted men in arrest and confinement by the civil authorities will receive no pay for the time of such absence; if released without trial, or after trial

ABSENCE WITHOUT LEAVE.

Forfeiture of pay during absence without leave.
July 15, 1870, c. 294, s. 17, v. 16, p. 319.
Sec. 1266, R. S.

829. Every officer who is dropped by the President from the rolls of the Army, for absence from duty three months without leave, shall forfeit all pay due or to become due.

COMMUTATION OF QUARTERS.

Par.
830. Allowance.
831. Duty without troops.
832. Ratio of commutation.

Par.
833. Commutation of Lieutenant-General.
834. Temporary absence.
835. Officers detailed abroad.

Commutation of quarters.
June 17, 1878, s. 9, v. 20, p. 151.

830. At all posts and stations where there are public quarters belonging to the United States, officers may be furnished with quarters in kind in such public quarters, and not elsewhere, by the Quartermaster's Department, assigning to the officers of each grade, respectively, such number of rooms as is now allowed to such grade by the rules and regulations of the Army: *Provided*, That at places where there are no public quarters, commutation[1]

---

and acquittal, their right to pay for the time of such absence is restored. Par. 1464, A. R., 1901.

The fact that an officer or soldier is under charges does not by military law deprive him of his pay, although under the application of military rules exceptions may arise to this rule. Dodge *v.* U. S., 33 Ct. Cls., 28.

The pay of officers detained by the civil authorities continues, but an officer absent without leave in willful diregard of his obligation must be held responsible for the results. Ibid.

[1] Commutation in the military or naval service is money paid in substitution of something to which an officer, sailor, or soldier is entitled; being regulated by statutes and regulations, it can not be allowed by inferior authority. Jaegle *v.* U. S., 28 Ct. Cls. 133. The right of an officer of the Army to commutation of fuel and quarters springs out of the general authority of the War Department, and has been indirectly sanctioned by Congress from the origin of the Government. This usage has been so long practiced in the Army, and so often sustained by Congress in appropriations for the payment of such commutations, that the right of officers under the regulations of the Army can not now be questioned. Whittlesey *v.* U. S., 5 Ct. Cls., 99. Since the foregoing decision was rendered the allowance of quarters for the several grades of officers of the Army and the monthly rate of commutation therefor having been fixed by statute the practice can no longer be said to rest upon usage or upon the authority of regulations. See acts of June 18, 1878, and June 23, 1879. See also Dig. Opin. J. A. G., par. 1941.

Officers on the active list detailed as professors of colleges and engineer officers engaged upon civil works are entitled to commutation of quarters and to purchase fuel under the provisions of section 9 of the act of June 17, 1878. Such commutation in the case of an engineer officer would not be payable from the appropriation for the civil work upon which he is engaged. Dig. Opin. J. A. G., pars. 1915,1916. See also Long *v.* U. S., 8 Ct. Cls., 398. An officer ordered home to await orders is not entitled to commutation of quarters, such home not being a military station. Phisterer *v.* U. S., 13 Ct. Cls., 110. When a military officer is ordered to the headquarters of a military department to await further orders and pursuant to the order remains there, performing no duty, he is entitled to commutation of quarters. If such headquarters are in a large city where there are quarters assignable to officers on duty it is not necessary for him to demand that quarters be assigned him. Lippitt *v.* U. S., 14 Ct. Cls., 148, and 100 U. S., 663.

Held that the term of description in section 9 of the act of June 18, 1878, "at places where there are no public quarters" includes places where the public quarters were insufficient for all the officers of the command; and that officers stationed at such therefor may be paid by the Pay Department to the officer entitled to the same at a rate not exceeding twelve dollars per room per month, and the commutation for quarters allowed to the General shall be at the rate of one hundred and twenty-five dollars per month, and to the Lieutenant-General at the rate of one hundred dollars per month. *Sec. 9, act of June 17, 1878 (20 Stat. L., 151).*

Duty without troops. Mar. 2, 1901, v. 31, p. 901.

The Secretary of War may determine what shall constitute travel and duty without troops within the meaning of the laws governing the payment of mileage and commutation of quarters to officers of the Army. *Act of March 2, 1901 (31 Stat. L., 901).*[1]

Rates of commutation. June 23, 1879 v. 21, p. 31.

832. No allowance shall be made for claims for quarters for servants heretofore or hereafter; and that the rate of commutation shall hereafter be twelve dollars per room per month for officers' quarters, in lieu of ten dollars, as now provided by law. *Act of June 23, 1879 (21 Stat. L., 31).*

Rate of commutation for Lieutenant-General. June 28, 1882, v. 22, p. 118.

833. The allowance for commutation of quarters to the Lieutenant-General of the Army shall be one hundred dollars per month.[2] *Act of June 28, 1882 (22 Stat. L., 118).*

---

places, to whom, on account of the insufficiency of the existing accommodations, no quarters could be furnished would be entitled to the commutation allowance. Dig. Opin. J. A. G., 569, par. 26.

An officer who has quarters in kind at one station does not by a change of station acquire a right to other quarters or commutation therefor until he vacates quarters at the former station, and amounts received for such commutation are a proper charge against him. 3 Dig. 2d Comp. Dec., par. 1139.

Temporary absence from his station on duty which requires an officer of the Army to travel during a considerable portion of the time does not amount to a change of station, and the officer does not lose his rights or acquire other rights respecting quarters by such absence. If there are available quarters at his station he is not entitled to commutation. Ibid., 1141.

Officers temporarily on duty in the field shall not lose their right to quarters or commutation thereof at their permanent stations while so temporarily absent. Act of July 16, 1892, 27 Stat. L., 176.

For allowance for rooms in kind see note 3 to paragraph 738 *ante*.

Where an army paymaster has paid an officer a sum as a commutation allowance through an error of law the United States is not bound by such payment, and may recover the money so paid in a proper action, with interest from the date when the officer's accounts were settled by the Treasury Department, at the rate established by the laws of the State in which the action is brought. U. S. *v.* Dempsey, 104 Fed. Rep., 197.

[1] Under the authority conferred by the act of March 3, 1901, it has been decided by the Secretary of War that "officers on duty in the War Department, at army and other general headquarters, attending surgeons and other officers on duty in cities and other places where public quarters are not furnished, but where enlisted men are on duty only as guards, orderlies, clerks, and messengers, and recruiting officers at city stations are regarded as being on duty without troops within the meaning of the laws and regulations." G. O. 43, A. G. O., 1901.

[2] The act of June 28, 1882 (22 Stat. L., 118), authorized commutation of quarters to be paid to officers and enlisted men of the Signal Service serving in the arctic regions, the same in amount as though they were serving in Washington in the District of Columbia. For regulations in respect to the payment of commutation of quarters to officers see paragraphs 1489 to 1496, Army Regulations of 1901.

Temporary absence.
Feb. 27, 1893, v. 27, p. 478.

834. Hereafter officers temporarily absent on duty in the field shall not lose their right to quarters, or commutation thereof, at their permanent station while so temporarily absent.[1] *Act of February 27, 1893 (27 Stat. L., 478).*

Attachés, etc., Feb. 27, 1893, v. 27, p. 478.

835. Hereafter the officers detailed to obtain military information from abroad shall be entitled to mileage and transportation, and also to commutation of quarters while on duty, as provided when on other duty. *Act of February 27, 1893 (27 Stat. L., 478).*

PAYMENTS TO OFFICERS.

Monthly payments.
July 15, 1870, s. 24, v. 16, p. 320.
Sec. 1268 R. S.

836. The sums hereinbefore allowed shall be paid in monthly payments by the paymaster.[2]

---

[1] Officers of the Army acting as Indian agents at places where there are suitable quarters provided by the Government are not entitled to commutation of quarters. 4 Compt. Dec., 210.

An officer relieved from duty at a station where he had quarters in kind and ordered to report in person for duty at a college during vacation is not entitled to commutation of quarters prior to the date on which he reports in person at the college. 4 Compt. Dec., 254.

An officer is not entitled to reimbursement for the amount paid for quarters when serving at a post where there are public quarters to which he could have been assigned by the Quartermaster's Department. 2 Compt. Dec., 187. Officers can not base claims to commutation of quarters on refusal or failure to occupy public quarters provided for their use. Ibid., 223.

Officers of the Army on the retired list who, upon their own application, are detailed to educational institutions, in accordance with the provisions of the act of November 3, 1893, are entitled to the full pay of their rank. 6 Compt. Dec., 120. Such officers are not entitled to commutation of quarters. Ibid., 506.

The act of May 12, 1898, which limits the compensation of contract surgeons to $150 per month, by implication prohibits the payment of commutation of quarters to contract surgeons. 6 Compt. Dec., 403. An officer who has been relieved from duty and directed to proceed to his home to await orders is not entitled to commutation of quarters. Ibid., 233.

[2] For instructions respecting the payment of commissioned officers see paragraphs 1298 to 1313, Army Regulations of 1895.

Section 1268 of the Revised Statutes, requires that officers shall be paid monthly; section 3848, Revised Statutes, in effect, forbids their being paid in advance. Their right, however, to assign their monthly pay, when duly accrued, has long been admitted. XV Opin. Att. Gen., 611. The prohibition by Army Regulations of the transfer of pay accounts before they are due implies the right to transfer them when or after due. XV Opin. Att. Gen., 271. The pay of an officer authorized to receive it can be paid by a paymaster only to the officer himself or his proper assignee. Where two or more persons produce assignments of an officer's pay, or of a portion or portions of the same, the paymaster should refuse to pay at all. The Government can not undertake to decide such controversies. Dig. Opin. J. A. G., par. 1923.

An officer will not hypothecate nor transfer a pay account not actually due. [a] When due it may be transferred by indorsement, naming the party to whom transferred, and may be paid by the proper paymaster if satisfied of the genuineness of the officer's signature and if no stoppage or other disability as to pay prevents. The date of transfer, certified by the officer whose account it is, will appear in the indorsement. When an officer transfers a pay account, he will, at the time of transfer, communicate the fact to the chief paymaster of the department, through the paymaster who is expected to pay it. If the officer be on leave, or if his accounts be payable

---

[a] Note in this connection the opinion of the Attorney-General, in XVI Opins., 191, to the effect that an approved account or voucher issued to a contractor for an amount due him under his contract is "not in any proper sense negotiable paper,"

TRAVEL ALLOWANCES.

MILEAGE.

Par.
837. Route, necessity for travel to be stated.
838. Duty to be stated in order.
839. Rate.
840. The same, distance, how computed:
841. Sea travel.
842. Travel without troops.
843. Transportation in kind.
844. The same, bond-aided roads.
845. The same, deduction.
846. Restriction on mileage.
847. Paymasters' clerks, expert accountant.
848. Mileage paid by paymasters.
849. The same.

837. From and after the passage of this act mileage of officers of the Army shall be computed over the shortest usually traveled routes between the points named in the order, and the necessity for such travel in the military service shall be certified to by the officer issuing the order and stated in the order. *Act of March 3, 1883 (22 Stat. L., 456.)*

Route to be used for computation; necessity for journey to be stated.
Mar. 3, 1883, v. 22, p. 456.

838. All orders involving the payment of mileage shall state the special duty enjoined. *Act of August 6, 1894 (27 Stat. L., 237).*

Duty to be stated.
Aug. 6, 1894, v. 27, p. 237.

839. For mileage to officers and contract surgeons, when authorized by law, * * * dollars. Hereafter the maximum sum to be allowed and paid to any officer of the Army shall be seven cents per mile. *Act of March 2, 1901 (30 Stat. L., 901).*

Mileage, rate.
Mar. 3, 1899, v. 30, p. 1068.

840. Officers so traveling shall be paid seven cents per mile and no more; distances to be computed and mileage to be paid over the shortest usually traveled routes, with deduction as hereinafter provided; and payment and settlement of mileage accounts of officers shall be made according to distances computed over routes established and by mileage tables prepared by the Paymaster-General of the Army under the direction of the Secretary of War;

Distances, how computed.
Mar. 2, 1901, v. 31, p. 901.

---

in Washington, the notification of transfer will be made to the Paymaster-General. Par. 1447, A. R. 1901.

The assignment of their pay accounts by army officers after the same become due is authorized by paragraph 1300 of the Army Regulations of 1895, and is legal. 3 Compt. Dec., 45.

An officer's "pay account" is not commercial paper, but, in its legal aspect, a mere receipt.(*a*) So *held* that a bona fide assignee of an officer's pay account for a certain month, who, on receiving payment thereon from a paymaster, delivered to the latter the account with his name written on the back of same, did not thereby incur the obligation of an indorser, or render himself liable as such for the amount to the paymaster, on its being ascertained that the officer had already himself drawn his pay for that month, and that a double payment had thus been made. Dig. Opin., J. A. G., par. 1892.

It has been held by the Comptroller of the Treasury that the allotment of any portion of the pay of a commissioned officer constituted a violation of the requirements of section 3477, Revised Statutes. 6 Compt. Dec., 319. The statutes authorizing the allotment of pay have exclusive relation to enlisted men.

and all payments made by paymasters on account of mileage previous to the passage of this act shall be settled in accordance with distance tables officially promulgated and in use at date of payment.[1] *Act of March 2, 1901* (*31 Stat. L., 901*).

Sea travel. Mar. 2, 1901, v. 31, p. 901.

841. Actual expenses only shall be paid to officers for sea travel when traveling, as herein provided for, to, from, or between our island possessions.[2] *Act of March 2, 1901* (*31 Stat. L., 901*).

---

[1] Section 1273, Revised Statutes, fixed the allowance of mileage at 10 cents per mile, to be computed over the nearest post route and to be paid by the Pay Department. The act of June 16, 1874 (18 Stat. L., 72), discontinued mileage as a method of reimbursement for expenses incurred in traveling on duty, and substituted therefor the payment of actual expenses in all cases of travel under orders. This provision was repeated in the act of March 3, 1875 (18 Stat. L. 452). The mileage allowance was restored and fixed at the rate of 8 cents per mile by the act of July 24, 1876 (19 Stat. L. 97), but was not payable when actual transportation had been furnished by the Quartermaster's Department, or in a conveyance owned or chartered by the United States, or on any railroad over which the troops and supplies of the United States were entitled to be transported free of charge; the distance in each case was to be computed by the shortest usually traveled route. Section 1273 was repealed by the act of July 24, 1876, above cited. The act of March 3, 1883 (22 Stat. L.,456), contained the requirement that mileage should be computed over the shortest usually traveled routes between the points named in the order, and that the necessity for travel should be certified to, in each case, in the order directing the journey. The act of June 30, 1886 (24 Stat. L., 95), fixed the rate of mileage at 4 cents per mile, and, in addition thereto, the cost of transportation actually paid, exclusive of sleeping and parlor car fares. The act of February 9, 1887 (24 Stat. L., 396), contains the following provision: "That in disbursing this amount the maximum sum to be allowed and paid to an officer shall be four cents per mile, distance to be computed over the shortest usually traveled routes, and, in addition thereto, upon the officer's certificate that it was not practicable to obtain transportation from the Quartermaster's Department the cost of the transportation actually paid by the officer over said route or routes, exclusive of sleeping or parlor car fare and transfers: *And provided further*, That when any officer so traveling shall travel in whole or in part on any railroad on which the troops and supplies of the United States are entitled to be transported free of charge he shall be allowed for himself only four cents per mile as a subsistence fund for every mile necessarily traveled over any such last-named railroad. All the money hereinbefore appropriated except the appropriation for mileage to officers when traveling on duty without troops when authorized by law shall be disbursed and accounted for by the Pay Department as pay of the Army, and for that purpose shall constitute one fund," which was repeated in the acts of September 22, 1888 (25 Stat. L., 483), March 2, 1889 (25 Stat. L., 827), June 13, 1890 (26 Stat. L., 151), February 24, 1891 (26 Stat. L., 773), July 14, 1892 (27 Stat. L., 177), and February 27, 1893. The acts of February 12, 1895 (28 Stat. L., 657), and March 16, 1896 (29 ibid., 60), contain the same requirements. The act of March 2, 1897 (29 ibid., 612, 614), provided that actual transportation should be furnished by the Quartermaster's Department to officers traveling under orders, and that mileage only should be paid by the Pay Department. The act of March 15, 1898 (30 Stat. L., 318), contained the requirement that "the maximum sum to be allowed and paid to any officer of the Army shall be seven cents per mile, distances to be computed by the shortest usually traveled route." By the act of March 3, 1899 (30 Stat. L.,1068), the foregoing requirement was made permanent. The act of March 15, 1898, also contained the proviso that "officers who, by reason of the decision of the accounting officers of the Treasury, have been compelled to pay from their own means one-half of the cost of their travel fare over railroads known as fifty per centum railroads shall be reimbursed the same by the Pay Department, and paymasters against whom disallowances have been made by the accounting officers of the Treasury, under such decision, shall have the amount so disallowed passed to their credit." For requirements of regulation in respect to travel on the public business, see paragraphs 77–84 and 1472–1488, Army regulations of 1901. See also pars. 842 to 851 *post*.

[2] This replaces a similar requirement in the act of March 3, 1899 (30 Stat. L., 1068). In conformity to a decision of the Comptroller of the Treasury dated March 3, 1899,

Travel with troops.
Mar. 2, 1901, v. 31, p. 901.

842. The Secretary of War may determine what shall constitute travel and duty without troops within the meaning of the laws governing the payment of mileage and commutation of quarters to officers of the Army.[1] *Act of March 2, 1901 (31 Stat. L., 901).*

Transportation in kind.
Mar. 2, 1901, v. 31, p. 901.

843. Officers who so desire may, upon application to the Quartermaster's Department, be furnished with transportation requests, exclusive of sleeping and parlor car accommodations, for the entire journey under their orders; and the transportation so furnished shall be a charge against the officer's mileage account, to be deducted at the rate of three cents per mile by the paymaster paying the account, and of the amount so deducted there shall be turned over to an authorized officer of the Quartermaster's Department three cents per mile for transportation furnished over any railroad which is not a free, bond-aided, or fifty per centum land-grant railroad for the credit of the appropriation for transportation of the Army and its supplies.[2] *Act of May 26, 1900 (31 Stat. L., 210); act of March 2, 1901 (31 Stat. L., 901).*

Bond-aided roads.
Ibid.

844. When the established route of travel shall, in whole or in part, be over the line of any railroad on which the

---

the following instructions have been promulgated by the Secretary of War in respect to the travel allowances of officers traveling without troops "to, from, and between" the insular possessions of the United States.

[1] Under the authority conferred by the act of March 3, 1901, it has been decided by the Secretary of War that "traveling with troops," in the sense here employed, will be regarded as covering all cases of officers included in orders for movement, in whatever manner, of their appropriate commands or in orders for movement of detachments, escorts, or stores which proceed by marches or by transportation belonging to or especially hired for the purpose by the United States, the idea being that in marches the officers should move as do the troops and that where transportation is specially devoted to the movement it is sufficient for all included therein. But the term will not be regarded as covering cases of officers included in the movement by railroad, stage, or like established lines of conveyances; of detachments of less than ten armed or unarmed men, such as guards and nurses for disabled or insane officers or soldiers; recruiting parties and escorts for inspectors, paymasters, and others, or the public funds or property in their charge, or of officers traveling on troop trains or transports, but not ordered to report to the commanding officer nor on duty with the troops or command on board, and such officers are not regarded as traveling with troops within the meaning of the laws and regulations. G. O. 43, A. G. O., 1901.

[2] The full 3 cents per mile deducted from the officer's mileage account must be turned over to the Quartermaster's Department and credited to the appropriation for transportation of the Army and its supplies in all cases where that Department has furnished the transportation, and this, too, without regard to the class of roads over which the transportation has been furnished.

If transportation is not furnished by the Quartermaster's Department its appropriation is not entitled to any credit.

The money turned over to an authorized officer of the Quartermaster's Department and credited to the appropriation for transportation of the Army and its supplies will be available for use to the same extent that it would be if it had been regularly appropriated. Dec. Compt. of Treasury of July 18, 1900. Circular 28, A. G. O., 1900. This provision authorizes army officers, before the commencement of a journey, under orders requiring travel without troops, to obtain actual transportation from the Quartermaster's Department, the cost of which will be deducted from the mileage authorized to be paid under paragraph 839. For regulations in furtherance of this requirement see G. O. 76, A. G. O., 1900.

troops and supplies of the United States are entitled to be transported free of charge, or over any of the bond-aided Pacific railroads, or over any fifty per centum land-grant railroad, officers traveling as herein provided for shall, for the travel over such roads, be furnished with transportation requests, exclusive of sleeping and parlor car accommodations, by the Quartermaster's Department. *Ibid.*

Deduction. *Ibid.*

845. When transportation is furnished by the Quartermaster's Department, or when the established route of travel is over any of the railroads above specified, there shall be deducted from the officer's mileage account by the paymaster paying the same three cents per mile for the distance for which transportation has been or should have been furnished.[1] *Ibid.*

Restriction on payment of mileage. Duty to be stated.
Aug. 6, 1894, v. 28, p. 237.

846. Hereafter no portion of the appropriation for mileage to officers traveling on duty without troops shall be expended for inspections or investigations, except such as are especially ordered by the Secretary of War, or such as are made by army and department commanders in visiting their commands, and those made by Inspector-General's Department in pursuance of law, army regulations, or orders issued by the Secretary of War or the Commanding General of the Army; and all orders involving the payment of mileage shall state the special duty enjoined.[2] *Act of August 6, 1894 (28 Stat. L., 237).*

---

[1] The act of May 26, 1900 (31 Stat. L., 210), contained the following provision: "For traveling expenses and commutation of quarters for civilian physicians employed by the Surgeon-General, one thousand five hundred dollars."

[2] It is a well-established fact that persons traveling on Government business are entitled to be reimbursed for their expenses. This is done either by a mileage allowance, a fixed sum as a commutation of expenses, or an itemized statement showing actual expenses. Prior to 1874 mileage was the most usual measure of allowances. 4 Compt. Dec., 421. Mileage is a form of reimbursement, and "public business" is the foundation on which it rests. Perrimond *v.* U. S., 19 Ct. Cls., 509. Allowances for travel and subsistence are payable to officers and agents of the United States only when they are employed at other places than their places of residence. Test *v.* U. S., ibid., 357. In fact, mileage is merely a commutation for traveling expenses. U. S. *v.* Smith, 158 U. S., 350.

The mileage allowance to an officer of the Army on the active list is fixed by law, the law in effect at the time the travel is performed and not the law in effect when the order for the travel is issued. 1 Compt. Dec., 29.

Except in cases of emergency, the right to mileage can not be conferred by an order issued after the journey has been performed. 4 Compt. Dec., 175. The law and regulations requiring a specific order prior to the commencement of the journey must be strictly complied with, and the officer must make the journey within a reasonable time in accordance with the order to acquire a right to mileage. Ibid.

An order to travel to a designated point, perform certain duty and return, is, in effect, two distinct orders, and the mileage allowances for each trip is fixed by the law at the time the travel in each case was commenced. 1 Compt. Dec., 29.

It is not necessary that an order to travel should specifically designate places and routes. It may leave them to the discretion of the officer, and the subsequent approval of the Department will be conclusive upon the accounting officers. Billings *v.* U. S., 23 Ct. Cls., 166. If public business was an element in an officer's circuity

MILEAGE TO PAYMASTERS' CLERKS AND TO THE EXPERT ACCOUNTANT OF THE INSPECTOR-GENERAL'S DEPARTMENT.

Travel allowances to paymasters' clerks and to expert accountant. Feb. 27, 1893, v. 27, p. 480.

817. That hereafter the maximum sum to be allowed paymasters' clerks and the expert accountant of the Inspector-General's Department when traveling on duty shall be four cents per mile, and, in addition thereto, when transportation can not be furnished by the Quartermaster's Department the cost of same actually paid by them, exclusive of sleeping or parlor car fare and transfers. *Act of February 27, 1893 (27 Stat. L., 480).*

---

of route, he is entitled to mileage therefor; if it was not, the Government is not answerable for the increased distance. Du Bose *v.* U. S., 19 Ct. Cls., 514.

Where the route is left to the discretion of the officer, his mileage should be calculated by the shortest usually traveled route, unless some good reason be shown for deviation. Crosby *v.* U. S., 22 Ct. Cls., 13. 2 Compt. Dec., 544.

The question as to the shortest usually traveled route between any two points is a question of fact, and to be determined by the best obtainable evidence. * * * The time required in making the journey, the rates of fare, and the fact that an officer should be absent from his post of duty for the shortest possible period are important elements in determining the shortest usually traveled route in any particular case.

Evidence should accompany the voucher on which payment is made, to establish the fact that the distance is computed by the route which, for the time and occasion, is the shortest usually traveled route. Mileage can in no case be allowed for any distance in excess of the distance actually traveled, and if the distance actually traveled exceed the distance by the shortest usually traveled route, mileage can be allowed only for the distance by the shortest usually traveled route. 1 Compt. Dec., 115.

The mileage of an officer of the Army is to be computed by the shortest usually traveled route regardless of the number of miles actually traveled, unless the orders under which he travels, or the necessities of the service (and not the mere convenience of the officer), require the use of a route longer than that usually traveled. 2 ibid., 544. See also 1 ibid., 118, 209; 4 ibid., 74; 5 ibid., 196.

When it appears that an army officer was directed to travel on military duty and had no order to stop over, or delay on his journey, it must be presumed by the accounting officers that he was directed to go by the shortest usually traveled route, without unnecessary delay, and he will be allowed only the cost of "through limited tickets" for such travel. The accounting officers look to the officer's orders as to the necessity for delay en route, not questioning the authority of the War Department to determine whether the officer's duty requires that he shall stop over on his journey. 3 Dig. Dec., 2nd Compt., par. 1426.

The law relating to the cost of transportation contemplates that army officers traveling on duty without troops shall travel over the usually traveled routes in the mode usually adopted and by the conveyances usually employed. The exigencies of the service should be of an unusual character, not admitting of even the possibility of delay, to justify the officer in engaging the more costly transportation on fast or limited trains. Ibid., 1429.

An officer ordered home, at his own request, to await orders, is entitled to mileage from his post to his home, such a journey constituting travel under orders. Williamson *v.* U. S., 23 Wall., 411; Phisterer *v.* U. S., 12 Ct. Cls., 98, and 94 U. S., 219. Where an officer who has received but has not yet taken advantage of a leave of absence is ordered to convey prisoners to another post his leave is to that extent suspended, and he is entitled to mileage. Andrews *v.* U. S., 15 Ct. Cls., 264.

The Army Regulations provide that the expiration of an officer's leave of absence must find him at his station. His station means his permanent station, not a place to which he was temporarily ordered and at which he accepted his leave of absence. Andrews *v.* U. S., 15 Ct. Cls., 264. An officer's proper station can not be changed by his being ordered to perform a temporary duty while on leave of absence. Ibid. If an officer on leave of absence be ordered to temporary duty at the place where he may happen to be, and he be kept there until after his leave of absence expires and

Payments to be made by Pay Department. June 30, 1886, v. 24, p. 95.

848. All the money hereinbefore appropriated (for pay, travel allowances, and commutation of quarters) shall be disbursed by the Pay Department of the Army, and for that purpose shall constitute one fund.[1] *Act of June 30, 1886 (24 Stat. L., 95).*

PAYMENTS OF MILEAGE TO BE MADE BY PAYMASTERS.

Mileage to be paid by Pay Department. July 15, 1870, s. 24, v. 16, p. 320. Sec. 1273, R.S.

849. No payment [of mileage] shall be made to any officer except by a paymaster of the Army.

TRAVEL PAY ON DISCHARGE.

Travel pay on discharge. Mar. 2, 1901, v. 31, p. 902. Sec. 1289, R.S.

850. Hereafter when an officer shall be discharged from the service, except by way of punishment for an offense, he shall receive for travel allowances from the place of his discharge to the place of his residence at the time of his appointment or to the place of his original muster into the service four cents per mile; and an enlisted man when discharged from the service, except by way of punishment for an offense, shall receive four cents per mile from the

---

then be ordered to his proper station, he will not be entitled to mileage. Barr *v.* U. S., 14 Ct. Cls., 272.

An officer who voluntarily quits the military service is not entitled to travel pay. 1 Compt. Dec., 370.

An officer whose resignation, tendered on the ground of physical disability, is accepted, becomes entitled to travel pay, provided the disability did not exist at the time of his entering the service, or was not incurred on account of his own misconduct during service. The length of service is material evidence in determining whether the disability existed prior to entry into the service. Ibid.

[1] All subsequent acts of appropriation for the support of the Army have contained a similar provision. The acts of appropriation of May 26, 1900, and March 3, 1901, except from the foregoing clause the appropriations for mileage of officers when authorized by law.

While the act of March 15, 1898 (30 Stat. L., 318), does not make it the duty of officers to use those railroads from which a benefit will accrue to the Government, it is no doubt within the authority of the Secretary of War, by regulation, to direct their use whenever practicable. 5 Compt. Dec., 196. An officer who actually travels over any of the railroads mentioned in the act, and having failed to secure transportation in kind, pays his own fare, is entitled to be reimbursed so much as it would have cost the Government had a request been used. When an officer travels over any of the railroads included in the act it will be presumed, in the absence of affirmative evidence to the contrary, that he has been furnished with a transportation request. Ibid. The cost of a local ticket, of the class obtained, between points for which transportation in kind is furnished should be deducted from the mileage allowance. Ibid.

An officer of the Army traveling under orders and using a conveyance upon which transportation and subsistence are furnished or paid for by the Government is not entitled to mileage. 4 Compt. Dec., 429. See also Ibid., 86.

Sleeping-car service is not a necessary incident to transportation, but must usually be considered as *lodging*, yet special circumstances may appear showing a legislative intent to include such service as a part of transportation. In ordinary cases where subsistence is excluded from traveling expenses such exclusion must be held to cover sleeping-car service on the ground that it is lodging and a part of subsistence. 4 Compt. Dec., 420.

The provision in the act of March 15, 1898 (30 Stat. L., 321), that the maximum sum to be allowed and paid to "any officer of the Army" shall be 7 cents per mile applies to all officers of the Army, including officers of the Corps of Engineers. 4 Compt. Dec., 711.

place of his discharge to the place of his enlistment, enrollment, or original muster into the service.[1] *Act of March 2, 1901 (31 Stat. L., 902).*

Sea travel. *Ibid.*

851. For sea travel on discharge actual expenses only shall be paid to officers and transportation and subsistence only shall be furnished to enlisted men. *Ibid.*

STOPPAGES.

Repairs to arms, etc.
Feb. 8, 1815, s. 7, v. 3, p. 204.
Sec. 1303, R.S.

852. The cost of repairs or damages done to arms, equipments, or implements shall be deducted from the pay of any officer or soldier in whose care or use the same were when such damages occurred, if said damages were occasioned by the abuse or negligence of said officer or soldier.[2]

---

[1] An officer who voluntarily quits the military service is not entitled to travel pay. 1 Compt. Dec., 370.

An officer whose resignation, tendered on the ground of physical disability, is accepted, becomes entitled to travel pay, provided the disability did not exist at the time of his entering the service, or was not incurred on account of his own misconduct during service. The length of service is material evidence in determining whether the disability existed prior to entry into the service. Ibid.

Under section 1289 of the Revised Statutes an officer of the Volunteer Army is entitled to travel pay from the place of his discharge to the place where he accepted his appointment, but is not entitled to *mileage* on his discharge. 5 Compt. Dec., 113.

An officer or soldier who is discharged for his own convenience is not entitled to travel pay or allowances. Ibid., 113.

An officer who is ordered to proceed to his home and is discharged, to take effect at a subsequent date, is entitled to mileage, but not to *travel pay.* Ibid., 87. See also ibid., 705.

Under section 1289 of the Revised Statutes, an officer of the Volunteer Army is entitled to travel allowances from the place of his discharge to the place where he accepted his appointment, but is not entitled to mileage on his discharge. Ibid., 113.

An order retiring an officer from active service in the Army, which contains no direction for him to proceed to his home, can not be regarded as an order directing him to perform the journey so as to confer a right to mileage. 4 ibid., 175.

[2] The pay of an officer or soldier can not be subjected to stoppage except by the authority of a statute or regulation specifically authorizing the same or of a sentence of court-martial imposing a forfeiture or fine as a punishment, or where the party has become indebted to the United States *on account.* In a case of supposed liability to stoppage, resulting from a neglect or an act chargeable as a military offense, and as to which the facts are disputed, it is in general preferable to have the case investigated and the actual pecuniary liability, if any, fixed by a trial by court-martial. A superior is not authorized to stop against the pay of an inferior the value of property charged to have been *criminally* misappropriated; and it is the experience of the Judge-Advocate-General that most or many of the cases of loss of or injury to public property in which the facts have been investigated and the damage assessed by boards of survey, would have been more profitably passed upon by courts-martial, by which, instead of a stoppage, a forfeiture could have been imposed, as a *punishment,* by sentence. Dig. Opin. J. A. Gen., 719, par. 1. See also ibid, p. 720, pars. 2, 4, 5; 721 ibid., par. 8.

By operation of law, indeed, under certain express statutory provisions, an officer's or soldier's pay may be withheld altogether, or temporarily, or be subjected to certain charges and thus reduced. Thus, by section 1265, Revised Statutes, an officer absent without leave forfeits all pay during the period of his absence, unless the same be excused as unavoidable. By section 1266, an officer dropped from the rolls for an unauthorized absence of three months is required to "forfeit all pay due or to become due." Section 1766 prohibits the payment of his compensation to any person while he continues "in arrears to the United States." Sections 1303 and 1304 require in effect that the cost of damage done to arms, etc., and the value of military stores found deficient, shall, except where the loss is occasioned by no personal fault of the party, be charged against the pay of the officer or soldier responsible for the damage or deficiency. Ibid, par. 1901.

Deficiency in articles of military supplies.
May 18, 1826, s. 3, v. 4. p. 174.
Sec. 1304, R. S.

853. In case of deficiency of any article of military supplies, on final settlements of the accounts of any officer charged with the issue of the same, the value thereof shall be charged against the delinquent and deducted from his monthly pay, unless he shall show to the satisfaction of the Secretary of War, by one or more depositions setting forth the circumstances of the case, that said deficiency was not occasioned by any fault on his part. And in case of damage to any military supplies, the value of such damage shall be charged against such officer and deducted from his monthly pay, unless he shall, in like manner, show that such damage was not occasioned by any fault on his part.[1]

Rations, etc., purchased on credit.
Mar. 3, 1865, s. 5, v. 13, p. 497.
July 28, 1866, s. 25, v. 14, p. 336.
Sec. 1299, R. S.

854. The amount due from any officer for rations purchased on credit, or for any article designated by the inspectors-general of the Army and purchased on credit from commissaries of subsistence, shall be deducted from the payment made to such officer next after such purchase shall have been reported to the Paymaster-General.

Officer in arrears.
Jan. 25, 1828, c. 2, v. 4, p. 246.
May 20, 1836, c. 77, v. 5, p. 31.
Sec. 1766, R. S.

855. No money shall be paid to any person for his compensation who is in arrears[2] to the United States until he has accounted for and paid into the Treasury all sums for which he may be liable. In all cases where the pay or salary of any person is withheld in pursuance of this section, the accounting officers of the Treasury, if required to do so by the party, his agent or attorney, shall report forthwith to the Solicitor of the Treasury the balance due; and the Solicitor shall, within sixty days thereafter, order suit to be commenced against such delinquent and his sureties.

---

[1] The power given to the Secretary of War to order a stoppage of pay against a delinquent officer is exclusive and discretionary, but is not to be asserted against an officer acting under an order which he is bound to obey, and as to which he is expressly relieved from personal liability. Such an abuse of power would not tend to preserve but to subvert military order and discipline. The refusal of the Secretary of War to stop an officer's pay is not a decision upon the merits; it will not bind the Government nor preclude the Comptroller from causing a suit to be brought against the officer; it merely determines that the officer is so far without fault that the harsh and summary remedy of stopping his pay should not be resorted to. Smith *v.* U. S., 24 Ct. Cls., 209, 215; Billings *v.* U. S., 23 ibid., 166, 175.

Where a paymaster receives no notice of stoppage and innocently pays an officer, the overpayment must be recovered from the officer. Smith *v.* U. S., 23 Ct. Cls., 452.

When an officer has been overpaid, or is indebted to the United States for money or property, or has failed properly to account for the same, the chief of the bureau concerned will promptly notify him of the amount of his indebtedness, or his failure to account. If after such notice he does not refund, or make satisfactory explanation, or take proper action within a reasonable time, the matter will be reported to the Secretary of War. Par. 1497, A. R., 1901.

On the order of the Secretary of War, stoppages may be made against the pay of officers for overpayments, illegal disbursement, or loss through fraud or neglect of the public funds, and for deficiencies in, loss of, or damage to, military supplies, unless proof be furnished that the deficiency, loss, or damage was not occasioned by any fault on their part. Par. 1498, ibid.

The notice of stoppage of officers' pay will be prepared in the form of a monthly circular to paymasters, advising them of stoppages outstanding at its date. This circular will be submitted to the Secretary of War for his approval prior to its publication. When an officer's name is borne thereon, no payment of salary will be made to him which is not in accordance with the stoppage entry made against his name. Par. 1499, ibid.

Overpayments to an officer will be deducted on the first payment after a notice of stoppage against him is received, even if the pay accounts have been assigned. Par. 1500, ibid.

[2] Persons in "arrears," are only such, as having previous transactions of a pecuniary nature with the Government, are found, upon the settlement of these transactions, to be in arrears to it. III Opin. Att. Gen., 52. This section only applies to cases in which the party who claims compensation is liable to the United States. Hedrick *v.* U. S., 16 Ct. Cls., 88.

Withholding officers' pay.
July 16, 1892, v. 27, p. 177.
Sec. 1766, R. S.

856. The pay of officers of the Army may be withheld under section seventeen hundred and sixty-six of the Revised Statutes on account of an indebtedness to the United States admitted or shown by the judgment of a court, but not otherwise, unless upon a special order issued according to the discretion of the Secretary of War.[1] *Act of July 16, 1892 (27 Stat. L., 177).*

PAY OF HOSPITAL MATRONS AND FEMALE NURSES.

Matrons.
Mar. 16, 1802, v. 2, p. 134; Aug. 3, 1861, v. 12, p. 288; Sec. 1277, R. S.

857. Hospital matrons in post or regimental hospitals shall receive ten dollars a month * * *.
July 4, 1864, v. 13, p. 416.

Superintendent.
Feb. 2, 1901, s. 19, v. 30, p. 753.

858. The Nurse Corps shall consist of one superintendent, * * * whose compensation shall be one thousand eight hundred dollars per annum. *Sec. 19, act of February 2, 1901 (31 Stat. L., 153).*

Nurses, reserve nurses.
Ibid.

859. The pay and allowances of nurses and reserve nurses, when on active service, shall be forty dollars per month when on duty in the United States, and fifty dollars per month when without the limits of the United States. *Ibid.*

Chief nurses.
Ibid.

860. When serving as chief nurses, their pay may be increased by authority of the Secretary of War, such increase not to exceed twenty-five dollars per month. *Ibid.*

Payments.
Ibid.

861. Payments to the Nurse Corps shall be made by the Pay Department. *Ibid.*

---

[1] The Army appropriation act of June 16, 1892, provides that "the pay of officers of the Army may be withheld under section 1766, R. S., on account of an indebtedness to the United States admitted or shown by the judgment of a court, but not otherwise, unless upon a special order issued according to the direction of the Secretary of War." *Held,* that the last part of this provision was to be construed not separately but in connection with the former, and could not be interpreted as empowering the Secretary of War to stop the pay of officers of the Army to satisfy private debts or claim for alimony. Dig. Opin. J. A. G., par. 2383.

PAY OF ENLISTED MEN.

Par.
862. Rates of pay.
863. The same, chief musicians.
864. The same, Indian scouts.
865. Increased pay, time of war.
866. The same, foreign service.
867. Retained pay, prohibition.
868. Reenlistment pay.
869–870. Continuous service pay.
871–874. Allotments of pay.
875. The same, credits.
876. Retired enlisted men.
Par.
877. The same, credit for service.
878. The same, allowances.
878*a* Pay of volunteers and militia.
879–881. Deposits.
882. The same, payment.
883. Certificates of merit.
884. Pay during absence, furloughs.
885. The same, absence without leave.
886. Pay during captivity.
887. Travel pay at discharge.
888. The same, sea travel.

Pay of enlisted men.
Mar. 3, 1869, c. 124, s. 5, v. 15, p. 318.
May 15, 1872, c. 160, s. 1, v. 17, p. 116; s. 3, Aug. 1, 1894, v. 28, p. 216; Mar. 2, 1899, v. 30, p. 977.
Sec. 1279, R.S.
Sec. 1280, R.S.

862. The monthly pay of the following enlisted men of the Army shall, during their first term of enlistment, be as follows, with the contingent conditions thereto, hereinafter provided:

Sergeant-majors and quartermaster-sergeants[1] of cavalry and infantry[2] and electrician-sergeants of artillery, thirty-four dollars.[3]

Sergeant-majors of artillery and infantry, twenty-three dollars.

Regimental quartermaster and commissary-sergeants of cavalry and infantry, twenty-three dollars.[4]

Drum-majors of cavalry, artillery, and infantry, twenty-five dollars.[5]

Chief trumpeters of cavalry, twenty-two dollars.

Principal musicians of artillery and infantry, twenty-two dollars.

Saddler-sergeants of cavalry, twenty-two dollars.

Squadron sergeant-majors of cavalry, battalion sergeant-majors of infantry, and color-sergeants of cavalry and infantry, twenty-five dollars.[6]

First sergeants of cavalry, artillery, and infantry, twenty-five dollars.[7]

Sergeants[7] and company quartermaster-sergeants of cavalry, artillery, and infantry, and mechanics of artillery, eighteen dollars.[1]

---

[1] Section 2, act of March 2, 1899 (30 Stat. L., 978).

[2] Act of May 26, 1900 (31 ibid., 208).

[3] Section 3, act of March 2, 1899 (30 ibid., 978); see, also, 5 Compt. Dec., 761.

[4] Sections 2, 3, and 4 ibid.

[5] Ibid. In sections 2, 3, and 4 of the act of March 2, 1899 (30 Stat. L., 977), the words "who shall have the rank, pay, and allowances of a first sergeant" relate to the drum major only, and not to the chief musicians, chief trumpeters, and principal musicians, whose pay and allowances remain the same as under the prior laws. 5 Compt. Dec., 761.

[6] Sections 2 and 4 ibid.

[7] Act of February 27, 1893 (27 Stat. L., 478). *Held*, that the Army appropiation act of February 27, 1893, in changing and fixing the pay of first sergeants and sergeants, had reference to those of the line of the Army, and did not include sergeants of the Engineer or Ordnance Corps. Dig. Opin. J. A. G., par. 1929.

Corporals of cavalry and light artillery, fifteen dollars.

Corporals of artillery and infantry, fifteen dollars.

Saddlers of cavalry, fifteen dollars.

Blacksmiths and farriers of cavalry, fifteen dollars.

Trumpeters of cavalry, thirteen dollars.

Musicians of artillery and infantry, thirteen dollars.

Privates of cavalry, artillery, and infantry, thirteen dollars.

Company cooks of cavalry, artillery, infantry, engineers, and the Signal Corps, eighteen dollars.[2]

Hospital stewards, first class, forty-five dollars.[3]

[Acting hospital stewards, twenty-five dollars.][3]

[Privates of the Hospital Corps, eighteen dollars.][3]

Ordnance-sergeants of posts, post commissary[4] and quartermaster-sergeants,[4] thirty-four dollars.

Sergeant-majors of engineers, thirty-six dollars.

Quartermaster-sergeants of engineers, thirty-six dollars.

Sergents of engineers and ordnance, thirty-four dollars.

Corporals of engineers and ordnance, twenty dollars.

Musicians of engineers, thirteen dollars.

Privates (first class) of engineers, ordnance, and Signal Corps,[5] seventeen dollars.

Privates (second class) of engineers, ordnance, and Signal Corps,[5] thirteen dollars.

[Sergeants (first class) of the Signal Corps, forty-five dollars.][6]

[Sergeants (second class) of the Signal Corps, thirty-four dollars.]

[First-class gunners, artillery corps, two dollars per month in addition to their pay; second-class gunners, one dollar per month in addition to their pay.][1]

---

[1] Section 3, act of March 2, 1899 (30 Stat. L., 978).

[2] Section 9 ibid.

[3] The monthly pay of hospital stewards fixed at $45, and that of acting hospital stewards at $25, by the act of March 1, 1887 (24 Stat. L., 435). The pay of privates of the Hospital Corps was fixed at $18 per month by the act of July 13, 1892 (27 Stat. L., 120).

[4] The monthly pay of post commissary-sergeants was fixed at $34 by the act of March 3, 1873 (17 Stat. L., 485), and that of post quartermaster-sergeants at the same rate by the act of July 5, 1884 (23 Stat. L., 107).

[5] The pay of sergeants of the first class in the Signal Corps was fixed at $45 per month by the act of October 1, 1890 (26 Stat. L., 653). The pay of sergeants of the second class in the Signal Corps was fixed at $34 per month by the act of June 20, 1878 (20 Stat. L., 219).

The enlisted men of the Army Service Corps, stationed at the Military Academy, receive the same pay and allowances as enlisted men of corresponding grades in the artillery. Act of June 20, 1890 (26 Stat. L., 653). See the chapters entitled ENLISTED MEN and THE MILITARY ACADEMY.

[6] The pay of first and second class privates of the Signal Corps was fixed by section 3, act of April 26, 1898 (30 Stat. L., 364).

Artificers, cavalry, artillery, and infantry, fifteen dollars.

Wagoners, cavalry, artillery, and infantry, fourteen dollars.

ADDITIONAL PAY.

Additional pay, May 15, 1872, s. 2, v. 17, p. 116. March 16, 1896, v. 29, p. 60. **Sec. 1281, R.S.**

863. To the rates of pay stated in the preceding section one dollar per month shall be added for the third year of enlistment, one dollar more per month for the fourth year, and one dollar more per month for the fifth year, making in all three dollars' increase per month for the last year of the first enlistment of each enlisted man named in said section.[2]

Pay of chief musicians. Sec. 3, Aug. 1, 1894, v. 28, p. 216.

864. The chief musicians of regiments shall receive sixty dollars a month and the allowances of a quartermaster-sergeant.[3]

Pay of Indian scouts; allowance for horses. July 28, 1866, c. 299, s. 6, v. 14, p. 333; Aug. 12, 1876, v. 19, p. 131. **Sec. 1276, R.S.**

865. Indians, enlisted or employed by order of the President as scouts, shall receive the pay and allowances of cavalry soldiers. That so much of the army appropriation act of twenty-fourth July, eighteen hundred and seventy-six, as limits the number of Indian scouts to three hundred is hereby repealed; and sections ten hundred and ninety-four and eleven hundred and twelve of the Revised Statutes, authorizing the employment of one thousand Indian scouts, are hereby continued in force: *Provided*, That a proportionate number of noncommissioned officers may be appointed. And the scouts, when they furnish their own horses and horse equipments, shall be entitled to receive forty cents per day for their use and risk so long as thus employed. *Act of August 12, 1876 (19 Stat. L., 131).*

---

[1] The additional pay of gunners was fixed by section 7, act of February 2, 1901 (31 ibid., 749).

[2] It was provided by the act of May 15, 1872 (17 Stat. L., 116), that this increase should be considered as retained pay, and should not be paid to the soldier until his discharge from the service, and should be forfeited unless his service was honest and faithful to the date of discharge. By the act of March 16, 1896 (29 Stat. L., 60), it was enacted that thereafter no pay should be retained.

[3] By the terms of section 3, act of August 1, 1894 (28 Stat L., 216), chief musicians, artificers, and wagoners theretofore excluded from the benefits of the act of May 15, 1872 (paragraphs 643, 644 *post*), became entitled to said benefits.

PAY OF ENLISTED MEN IN CONFINEMENT BY CIVIL AUTHORITY.

In view of the "pay status of (officers and) enlisted men withdrawn from duty by arrest and confinement by the civil authorities," as established by par. 1464, A. R., 1901—*held* that an enlisted man had no claim for his pay for a period during which he was detained by the civil authorities in arrest and for trial, although his offense was shown to have been a slight one and he was convicted of an offense of much less gravity than that with which he was charged.

WAR INCREASE—INCREASE FOR FOREIGN SERVICE.

War increase. Apr. 26, 1898. s. 6, v. 30, p. 262,

866. In time of war the pay proper of enlisted men shall be increased twenty per centum over and above the rates of pay as fixed by law.[1] *Sec. 6, act of April 26, 1898 (30 Stat. L., 262).*

Foreign service. Mar. 2, 1901, v. 31, p. 903.

867. Hereafter the pay proper of all * * * enlisted men serving beyond the limits of the States comprising the Union, and the Territories of the United States contiguous thereto, shall be increased * * * twenty per centum for enlisted men over and above the rates of pay proper as fixed by law for time of peace, and the time of such service shall be counted from the date of departure from said States to the date of return thereto.[2] *Act of March 2, 1901 (31 Stat. L., 903).*

RETAINED PAY.[3]

No pay to be retained hereafter Mar. 16, 1896, v 19, p. 50.

867a. Hereafter no pay shall be retained; but this provision shall not apply to deductions authorized on account of the Soldiers' Home. *Act of March 16, 1896 (29 Stat. L., 60).*

---

[1] It has been decided by the Comptroller of the Treasury that the increase of 20 per cent authorized by section 6 of the act of April 26, 1898, is to be computed upon the minimum rates of pay, or pay proper, allowed by law to the several grades of enlisted men. All increases in or additions to the pay of enlisted men, as for reenlistment, length of service, certificates of merit, and the like are to be excluded from the computation. 4 Compt. Dec., 668.

[2] This enactment replaces a requirement *in pari materia* which was contained in the act of May 26, 1900 (31 Stat. L., 211). The act of March 3, 1901, also contains a provision that "the officers and enlisted men who have served in China at any time since the twenty-sixth day of May, nineteen hundred, shall be allowed and paid for such service the same increase of pay proper as is herein provided for." The statute last named also contains the requirement that "enlistments in the Regular Army on and after April twenty-first, eighteen hundred and ninety-eight, from which date war was declared to have existed between the United States and Spain, up to and including April twenty-sixth, eighteen hundred and ninety-eight, shall be deemed enlistments for the war with Spain, and shall entitle men so enlisting to the extra pay and on the same conditions granted to men who enlisted in the Regular Army subsequent to the declaration of war, for the war only, as provided by an act approved March third, eighteen hundred and ninety-nine, entitled "An act making appropriations for the support of the Regular and Volunteer Army for the fiscal year ending June thirtieth, nineteen hundred."

[3] By the acts of May 15, 1872 (17 Stat. L., 116, sec. 1281, Revised Statutes), and June 16, 1890 (26 ibid., 157), certain portions of the monthly pay of enlisted men were retained by the United States. The sums so retained were paid to the soldier at discharge, with interest at the rate of 4 per cent per annum from the several dates of retention, provided the service of the soldier had been honest and faithful, and the Secretary of War was authorized to determine what misconduct on the part of the soldier should "constitute a failure to render honest and faithful service" within the meaning of the statute. It was provided, however, that "no soldier who has deserted at any time during the term of an enlistment shall be deemed to have served such term honestly and faithfully" (26 Stat. L., 157). The practice of retaining pay was discontinued as to enlisted men in the first year of their enlistments by the act of February 12, 1895 (28 Stat. L., 654), and as to enlisted men generally by the act of March 16, 1896 (29 Stat. L., 60). Since March 16, 1896, the several statutes respect-

REENLISTMENT AND CONTINUOUS SERVICE PAY.

Reenlistment pay.
May 15, 1872, c. 160, s. 3, v. 17, p. 116; Aug. 4, 1854, c. 247, s. 2, v. 10, p. 575; Aug. 1, 1894, v. 28, p. 215.
Sec. 1282, R.S.

868. All enlisted men mentioned in section twelve hundred and eighty, who, having been honorably discharged have reenlisted or shall reenlist within three months thereafter, shall, after five years' service, including their first enlistment, be paid at the rate allowed in said section to those serving in the fifth year of their first enlistment.[1] *Act of August 1, 1894* (*28 Stat. L.*, *215*).

Continuous service pay.
Reenlistment.
Aug. 4, 1854, c. 247, s. 2, v. 10, p. 575: May 15, 1872, c. 160, s. 4, v. 17, p. 117; Aug. 1, 1894, s. 3, v. 28, p. 215.
Sec. 1284, R.S.

869. Every soldier who, having been honorably discharged, reenlists within three months thereafter, shall be further entitled, after five years' service, including his first enlistment, to receive, for the period of five years next thereafter, two dollars per month in addition to the ordinary pay of his grade; and for each successive period of five years of service, so long as he shall remain continuously in the Army, a further sum of one dollar per month. The past continuous service of soldiers now in the Army shall be taken into account, and shall entitle such soldier to additional pay according to this rule; but services rendered prior to August fourth, eighteen hundred and fifty-four, shall in no case be accounted as more than one enlistment.[2]

Period extended to three months.
R. S., secs. 1282, 1284, amended.
Additional pay.
Aug. 1, 1894, s. 3, v. 28, p. 215.

870. The period within which soldiers may reenlist with the benefits conferred by sections twelve hundred and eighty-two and twelve hundred and eighty-four[3] of the Revised Statutes, be, and the same is hereby, extended to three months; and hereafter every enlisted man in the Army, excepting general service clerks and general service messengers, shall be entitled to all the benefits conferred by sections twelve hundred and eighty-one[4] and twelve

---

ing the retention of pay of enlisted men have applied only in the settlement of the accounts in cases where retained pay had accrued prior to the passage of the act of March 16, 1896. (*a*)

[1] The authority to retain pay conferred by section 1281, Revised Statutes (paragraph 639, *ante*), was withdrawn as to all enlisted men by the act of March 16, 1896 (29 Stat. L., p. 60). See par. 642, *ante*.

[2] The right of a soldier, under section 1284 of the Revised Statutes, to $1 per month additional pay for ten years' service does not depend merely upon the ten years' service, but upon an honorable discharge and a second reenlistment. The increase can be allowed only for services rendered after the enlistment, and the principle applies to subsequent reenlistments. 1 Compt. Dec., 459; 3 Dig. Dec. 2d Compt., 967; Webb *v.* U. S., 23 Ct. Cls., 58. By section 1286, Revised Statutes, $2 per month additional pay was allowed to certain noncommissioned officers who served in the war with Mexico.

[3] Paragraphs 868 and 869, *ante*.

[4] Paragraph 863, *ante*.

---

a Retained pay is authorized by law. The Secretary of War has no control over it. He only determines whether the service has been honest and faithful. The operation of the law follows immediately upon his decision, and either vests in the soldier the right to receive the pay or deprives him of it, according to the character of the service he has rendered. 3 Dig. 2d Compt. Dec., 231.

Under the act of June 16, 1890, the accounting officers have no jurisdiction to review a decision of the Secretary of War that a soldier did not serve honestly and faithfully. 3 Compt. Dec., 557.

hundred and eighty-two[1] of the Revised Statutes: *Provided*, That to entitle them to the additional pay authorized by section twelve hundred and eighty-one,[2] for men serving in the third, fourth, and fifth years, the service must have been continuous within the meaning of this section.[2] *Sec. 3, act of August 1, 1894 (28 Stat. L., 215).*

Continuous service.

ALLOTMENTS OF PAY BY ENLISTED MEN.

Allotments of pay by enlisted men.
Mar. 2, 1899, s. 16, v. 30, p. 981.

871. The Secretary of War is hereby authorized to permit enlisted men of the United States Army to make allotments of their pay, under such regulations as he may prescribe, for the support of their families or relatives, for their own savings, or for other purposes, during such time as they may be absent on distant duty, or under other circumstances warranting such action.[3] *Sec. 16, act of March 2, 1889 (30 Stat. L., 981).*

Credit for allotments.
May 26, 1900, v. 31, p. 200.

872. All allotments of pay of enlisted men of the United States Army, under section sixteen of act of Congress approved March second, eighteen hundred and ninety-nine, that have been or shall be paid to the designated allottees after the expiration of one month subsequent to the month in which said allotments accrued shall pass to the credit of the disbursing officer who has made or shall make such payment: *Provided*, That said disbursing officer shall, before making payment of said allotments, use, or shall have used, due diligence in obtaining and making use of all information that may have been received in the War Department relative to the grantors of the allotments: *And provided further*, That if an erroneous payment is made because of the failure of an officer responsible for such report to report, in the manner prescribed by the Secretary of War, the death of a grantor or any fact which renders the allotment not payable, then the amount of such erroneous payment shall be collected by the Paymaster-General from the officer who fails to make such report, if such collection is practicable. *Act of May 26, 1900 (31 Stat. L., 206).*

---

[1] Paragraphs 868 and 869, *ante*.

[2] Page 863, *ante*. Section 1283, Revised Statutes, contains the provision that enlisted men, now in the service, shall receive the rates of pay established in this chapter according to the length of their service.

The act of February 27, 1893 (27 Stat. L., 478), which prohibited the reenlistment of privates of over ten years' service or who were over 35 years old, except such as had served as enlisted men for twenty years or upward, was repealed by the act of August 1, 1894 (28 Stat. L., 215), and the provisions of section 1284, Revised Statutes, were extended to all enlisted men in the Army, except general-service clerks and messengers. See also pars. 1528, 1529, and 1530, A. R., 1901.

Held that the additional pay upon reenlistment accorded to soldiers by section 1284, Revised Statutes, was intended as a compensation for long and continued military service, without reference to the kind of service or the corps in which it was rendered; and therefore that, where this additional pay had once begun to accrue to a soldier by reason of his having entered, in accordance with the provisions of the section, upon a second term of five years' service in the infantry, his continued right to the same was not interrupted by his being discharged from the infantry and (on the next day) enlisted in the Ordnance Corps. Dig. Opin. J. A. G., par. 1911.

A soldier who reenlisted more than three months after the expiration of his previous term of enlistment is not entitled to the additional pay provided by section 1281, Revised Statutes, as amended by section 3 of the act of August 1, 1894, for reenlisting within three months, notwithstanding that, by reason of sickness, his reenlistment was antedated, by direction of the Major-General Commanding the Army, so as to bring it within the limitation of three months; nor to regular pay prior to his actual reenlistment. 6 Compt. Dec., 754.

[3] Under section 16 of the act of March, 1899, which authorizes the Secretary of War to permit enlisted men of the Army to make allotments of their pay, payment in advance, or without evidence that the soldier is entitled to the amount allotted at the time the payment is to be made, is not authorized. 6 Compt. Dec., 252.

Payments. Mar. 2, 1901, v. 31, p. 896.

873. Hereafter all allotments of pay of enlisted men of the United States Army, under section sixteen of act of Congress approved March second, eighteen hundred and ninety-nine, that have been or shall be paid to the designated allottees, after the expiration of one month subsequent to the month in which said allotments accrued, shall pass to the credit of the disbursing officer who has made or shall make such payment. *Act of March 2, 1901 (31 Stat. L., 896).*

The same.

874. Said disbursing officer shall, before making payment of said allotments, use, or shall have used, due diligence in obtaining and making use of all information that may have been received in the War Department relative to the grantors of the allotments. *Ibid.*

Ibid.

Erroneous payments.

875. If an erroneous payment is made because of the failure of an officer responsible for such report to report, in the manner prescribed by the Secretary of War, the death of a grantor or any fact which renders the allotment not payable, then the amount of such erroneous payment shall be collected by the Paymaster-General from the officer who fails to make such report, if such collection is practicable.[1] *Ibid.*

Ibid.

PAY OF RETIRED ENLISTED MEN.

Retired enlisted men. War service; how computed. Sec. 1283, R. S. Sept. 30, 1890, v. 26, p. 504; Mar. 16, 1896, v. 29, p. 62.

876. That when an enlisted man has served as such thirty years in the United States Army or Marine Corps, either as private or noncommissioned officer, or both, he shall, by application to the President, be placed on the retired list hereby created, with the rank held by him at the date of retirement, and he shall receive thereafter seventy-five per centum of the pay and allowances of the rank upon which he was retired: *Provided*, That if said enlisted man had war service with the Army in the field, or in the Navy or Marine Corps in active service, either as volunteer or regular, during the war of the rebellion, such war service shall be computed as double time in computing the thirty years necessary to entitled him to be retired.[1] *Act of September 30, 1890 (26 Stat. L., 504).*

---

[1] For requirements of regulations in respect to allotments of pay by enlisted men, and payments of the same to the designated allottees, see paragraphs 1531 to 1544, Army Regulations of 1901. Under the authority conferred by the above statutes the privilege of making allotments of pay is restricted to enlisted men and does not extend to commissioned officers.

Credit for foreign service. May 26, 1900, v. 31, p. 209.

877. Hereafter in computing length of service for retirement, credit shall be given the soldier for double the time of his actual service in Porto Rico, Cuba, or in the Philippine Islands. *Act of May 26, 1900 (31 Stat. L., 209).*

Allowances of retired enlisted men. Mar. 16, 1896, v. 29, p. 62.

878. Hereafter a monthly allowance of nine dollars and fifty cents be granted in lieu of the allowance for subsistence and clothing.[2] *Act of March 16, 1896 (29 Stat. L., 62).*

PAY OF VOLUNTEERS AND MILITIA.

Pay and allowances of volunteers, etc. Apr. 22, 1898, s. 12, v. 30, p. 363. **Sec. 1292, R.S.**

878a. All officers and enlisted men of the Volunteer Army, and of the militia of the States when in the service of the United States, shall be in all respects on the same footing as to pay, allowances, and pensions as that of officers and enlisted men of corresponding grades in the Regular Army.[3] *Sec. 12, act of April 22, 1898 (30 Stat. L., 363).*

DEPOSITS.

Deposits of soldiers' savings. May 15, 1872, c. 161, s. 1, v. 17, p. 117; Mar. 3, 1883, v. 22, p. 456. **Sec. 1305, R.S.**

879. Any enlisted man of the Army may deposit his savings, in sums not less than five dollars, with any army paymaster, who shall furnish him a deposit book, in which shall be entered the name of the paymaster and of the soldier, and the amount, date, and place of such deposit. The money so deposited shall be accounted for in the same manner as other public funds, and shall pass to the credit of the appropriation for the pay of the Army, and shall not be subject to forfeiture by sentence of court-martial, but shall be forfeited by desertion, and shall not be permitted to be paid until final payment on discharge, or to the heirs or representatives of a deceased soldier, and that such deposit be exempt from liability for such soldier's debts: *Provided*, That the Government shall be liable for the amount deposited to the person so depositing the same.[1]

---

[1] This statute replaces the act of February 14, 1885 (23 Stat. L., 305), on the same subject.

[2] See also the title *Retirement of Enlisted Men* in the chapter entitled ENLISTED MEN.

Under the act of February 14, 1885 (23 Stat. L., 305), and the act of September 30, 1890 (26 ibid., 504), providing that a hospital steward shall be retired on 75 per cent of the pay and allowances of the rank upon which he was retired, the steward is not entitled to commutation for fuel and quarters, but he is entitled to three-fourths of his entire personal pay, including clothing and subsistence. Lander *v.* U. S., 30 Ct. Cls., 311.

The increase of 20 per cent authorized in the pay of enlisted men in time of war does not apply to enlisted men on the retired list. 6 Compt. Dec., 182.

[3] This enactment replaces section 1292, Revised Statutes, *in pari materia.*

Interest on deposits.
May 15, 1872, c, 161, s. 2, v. 17, p. 117.
Sec. 1306, R.S.

880. For any sums not less than five dollars so deposited for the period of six months or longer, the soldier, on his final discharge, shall be paid interest at the rate of four per centum per annum.[2]

Regulations for deposits to be made by Secretary of War.
May 15, 1872, c. 161, s. 4, v. 17, p. 117. Sec. 1307, R.S.

881. The system of deposits herein established shall be carried into execution under such regulations as may be established by the Secretary of War.[3]

Deposits; payment on discharge.
May 15, 1872, s. 4, v. 17, p. 117.
Sec. 1308, R.S.

882. The amounts of deposits * * * accumulated to the soldier's credit under section thirteen hundred and five, shall, when payable to him on discharge, be paid out of the appropriations for "Pay of the Army" for the then current fiscal year.

CERTIFICATES OF MERIT.

Certificate of merit.
Feb. 2, 1891, v. 26, p. 737.
Sec. 1285, R.S.

883. A certificate of merit granted to an enlisted man for distinguished service shall entitle him, from the date of such service, to additional pay at the rate of two dollars per month while he is in the military service, although such service may not be continuous. *Sec. 2, act of February 9, 1891 (26 Stat. L., 737).*

PAY DURING ABSENCE.

Furloughs.
Eleventh Article of War.

884. Every officer commanding a regiment or an independent troop, battery, or company, not in the field, may, when actually quartered with such command, grant furloughs to the enlisted men in such numbers and for such time as he shall deem consistent with the good of the service. Every officer commanding a regiment, or an independent troop, battery, or company, in the field, may grant furloughs, not exceeding thirty days at one time, to five per centum of the enlisted men for good conduct in the line of duty, but subject to the approval of the commander of the forces of which said enlisted men form a part. Every company officer of a regiment, commanding any troop, battery, or company not in the field, or commanding in any garrison, fort, post, or barrack, may, in the absence of his field officer, grant furloughs to the enlisted men, for a time not exceeding twenty days in six months, and not to more than two persons to be absent at the same time.[1] *Eleventh Article of War.*

---

[1] The act of June 16, 1890 (26 Stat. L., 157), contains the requirement that the sums retained from the monthly pay of enlisted men under sections 1281 and 1282, Revised Statutes, shall be treated as deposits upon which interest shall be paid in accordance with sections 1305, 1306, 1307, and 1308, Revised Statutes.

[2] Amended by the act of March 3, 1883 (22 Stat. L., 456), so as to authorize the deposit, at interest, of sums not less than $5 in amount.

[3] For regulations respecting deposits, see paragraphs 1371–1378, Army Regulations of 1895.

Held, under section 1306, Revised Statutes, that a soldier, having savings on deposit as authorized by section 1305, Revised Statutes, was not entitled to interest on the same after the date of the approval of a sentence imposing upon him a dishonorable discharge; although such discharge, by reason of the soldier being subjected to a term of confinement adjudged by the same sentence, was not delivered personally to the soldier but to the commanding officer to retain in trust for him pending his confinement. Dig. Opin. J. A. G., par. 1052.

Section 1305, Revised Statutes, provides for the deposit by an enlisted man of his savings with a paymaster, to be paid over to him upon discharge. *Held* that this statute provided for voluntary deposits only; and that an officer, however laudable his motive, was not legally authorized in thus depositing, against the will of a soldier, certain money in his hands belonging to the latter. Ibid., par. 1913.

Absence without leave. *Thirty-second Article of War.*

885. Any soldier who absents himself from his troop, battery, or company, or detachment, without leave from his commanding officer, shall be punished as a court-martial may direct.[2] *Thirty-second Article of War.*

---

[1] For instructions in respect to the issue of furloughs see paragraphs 116–124, Army Regulations, 1901. Enlisted men on furlough suffer no deduction of pay in consequence of their authorized absence. They are paid on their return to duty, and can only be paid, while absent on furlough, with the authority of the Secretary of War.

[2] An enlisted man who has absented himself from his post or company without authority is subjected to the forfeiture of pay and allowances prescribed by paragraph 144 of the Army Regulations of 1901, although not brought to trial for his absence as an offense. The forfeiture is a stoppage by operation of law, irrespective of any punishment that may be imposed, and whether any be imposed or not. Thus a soldier acquitted under a charge of desertion is acquitted of the absence without leave involved in the charge, and can not be *punished* therefor; but, if he has been absent without leave *in fact*, he incurs the forfeiture specified in the regulation. And a soldier brought to trial for, and convicted of, an absence without leave is subject to the forfeiture, though none be adjudged in the sentence. Otherwise, however, if the findings be *disapproved* as not sustained by the testimony. But the stoppage incurred under paragraph 137, Army Regulations of 1901, is enforced only upon a conviction by court-martial. Dig. Opin. J. A. G., 140, par. 3; see also pars. 137 and 144, 1556, 1557, and 1558, Army Regulations of 1901.

The forfeiture specified in paragraph 133, Army Regulations of 1895, should not be enforced for absences of less than one day, but the soldier should be left to be punished by sentence of summary court. Thus where the unauthorized absence was for but seven and a half hours a forfeiture of a day's pay would deprive the soldier of pay for sixteen and a half hours which he had actually earned. *Held*, therefore, that a stoppage of one day's pay in such a case was not warranted. Ibid., 141, par. 4.

In paragraphs 144, 1557 and 1558, Army Regulations of 1901, it is directed that no enlisted man shall receive pay or allowances for any time during which he has been absent without leave (unless he shall furnish to his commanding officer a satisfactory excuse for such absence), and, further, that a deserter shall forfeit all pay and allowances due him at the time of his desertion. These forfeitures are incurred by operation of law, upon the commission of the offense, independently of any punishment for the same by sentence of court-martial, and it is not essential to their taking effect that the offense should have been found by a military court. In general, however, they can not safely be enforced in the absence of an ascertainment of the guilt of the party by a trial and conviction. Only such pay is affected by these regulations as is expressly specified therein. Thus a deserter forfeits both pay due at the time of his offense and pay for the period of his unauthorized absence, so that, upon his apprehension or surrender, nothing whatever is due him. But here the forfeiture by opera-

Pay during captivity. Mar. 30, 1814, c. 37, s. 14, v. 3, p. 115. Sec. 1288, R. S.

886. Every noncommissioned officer and private of the Regular Army, and every officer, noncommissioned officer, and private of any militia or volunteer corps in the service of the United States who is captured by the enemy, shall be entitled to receive during his captivity, notwithstanding the expiration of his term of service, the same pay, subsistence, and allowance to which he may be entitled while in the actual service of the United States; but this provision shall not be construed to entitle any prisoner of war of such militia corps to any pay or compensation after the date of his parole, except the traveling expenses allowed by law.

TRAVEL PAY ON DISCHARGE.

Travel pay on discharge. May 26, 1900, v. 31, p. 211.

887. Hereafter an enlisted man when discharged from the service, except by way of punishment for an offense, shall receive four cents per mile from the place of his discharge to the place of his enlistment, enrollment, or original muster into the service.[1] *Act of May 26, 1900* (*31 Stat. L., 211*).

Sea travel. Mar. 2, 1901, v. 31, p. 902.

888. For sea travel on discharge actual expenses only shall be paid to officers, and transportation and subsistence

---

tion of law ends; from this date his pay begins to run anew; and unless his *sentence* (in the case of his trial and conviction) includes a forfeiture of pay due he will be entitled to his pay (less any legal stoppages or deductions) from such date (which is considered to be that of his return to service) to the date of his discharge, whether this be a dishonorable discharge adjudged by the sentence and executed forthwith, or—the sentence not imposing such punishment—an honorable discharge given him in the usual manner after a further period of service. Paragraph 140, indeed, provides that this pay shall not be rendered to him prior to trial, but it does not affect his right to receive it when the trial is completed, and it is found not to be forfeited by the sentence of the court.

An officer or soldier brought to trial for desertion or absence without leave, and *acquitted*, can not of course be subjected to any of these forfeitures; norcan one who has been convicted but whose conviction has been *disapproved* by the competent reviewing authority. An acquittal of desertion, or a disapproval of a conviction of desertion, includes of course an acquittal, or a legal nullifying of the conviction, of the offense of *absence without leave* included in the desertion.

So, where a charge of desertion against a soldier was removed in orders, as unfounded, and he was granted an honorable discharge, *held* that the forfeiture prescribed by these regulations could not be enforced. Dig. Opin. J. A. G., 562, par. 9.

[1] An officer or soldier who is discharged for his own convenience is not entitled to travel pay or allowances. 5 Compt. Dec., 113. An enlisted man who is discharged at his own request by reason of the illness of his wife is discharged for his own convenience and is not entitled to travel pay. Ibid., 939.

For statute regulating the travel pay of enlisted men of the regular and volunteer forces when discharged by the Secretary of War see the act of June 6, 1900 (31 Stat. L., 708), par. 541, *ante*. For statutes regulating the payment of extra pay to officers and enlisted men of volunteers on muster out or discharge from the military service see the acts of January 12, 1899 (30 Stat. L., 784), March 3, 1899 (ibid., 1073), and May 26, 1900, (31 ibid., 217), pars. 536 to 538, *ante*.

Under section 1290, Revised Statutes, as modified by the act of February 27, 1877 (19 Stat. L., 244), it has been held that where a soldier's first discharge is followed by his reenlistment within a few days, so that his service is practically continuous, and his second discharge occurs at the place of his original enlistment, he is not entitled to commutation for travel and subsistence to the place of his second enlistment. U. S. *v.* Thornton, 160 U. S., 654.

only shall be furnished to enlisted men.[1] *Act of March 2, 1901 (31 Stat. L., 902).*

STOPPAGES AND DEDUCTIONS.

Par.
889. Soldiers' Home.
890. Recruits at depots.
891. Altering clothing.
892. The same, restriction.
893. Clothing allowance.
Par.
894. The same, balances.
895. Tobacco.
896. Subsistence stores, credit sales.
897. Damage to arms.
898. Assignments of pay forbidden.

Deduction for Soldiers' Home.
Mar. 3, 1851, s. 7, v. 9, p. 596.
Mar. 3, 1859, s. 7, v. 11, p. 434.
Sec. 4819, R. S.

889. There shall be deducted from the pay of every noncommissioned officer, musician, artificer, and private of the Army of the United States the sum of twelve and a half cents per month, which sum so deducted shall, by the Pay Department of the Army, be passed to the credit of the Commissioners of the Soldiers' Home. * * * But the deduction of twelve and a half cents per month from the pay of noncommissioned officers, musicians, artificers, and privates of regiments of volunteers, or other corps or regiments raised for a limited period, or for a temporary purpose or purposes, shall only be made with their consent.[2]

Recruits to have credit, etc., at depots for recruits.
June 30, 1882, sec. 3, v. 22, p. 122.

890. Traders and laundrymen at depots for recruits in the Army are authorized to furnish such recruits, on credit, with laundry work and such articles as may be necessary for their cleanliness and comfort, at a total cost not to exceed seven dollars in value per man. That muster and pay rolls be made out showing the amounts the recruits respectively owe to the traders and laundrymen, and signed by them before leaving the depot, and that the traders and laundrymen be paid on such rolls, the amount paid for each recruit to be noted accordingly on the muster and descriptive rolls, in order that it may be withheld, after he joins his company, by the paymaster, at the first subsequent payment, under such rules and regulations as may be adopted by the War Department: *Provided*, That this provision shall apply only to recruits on their enlistment, and the credit shall only be allowed on the written order of the regular recruiting officer at said station.[3] *Sec. 3, act of June 30, 1882 (22 Stat. L., 122).*

---

[1] This enactment replaces a requirement *in pari materia* of the act of May 26, 1900. 31 Stat. L., 211.

[2] The act of March 16, 1896 (29 Stat. L., 60), discontinuing the practice of retaining the pay of enlisted men, contains a provision excepting the deduction authorized by section 4819 of the Revised Statutes from the operation of the clause.

[3] The act of June 28, 1893 (27 Stat. L., 426), directing that no more post traders be appointed, will operate to restrict this privilege to laundrymen at depots. Paragraph 1192, Army Regulations of 1895, requires all laundry charges to be charged to the recruit on his clothing account and to be noted on his descriptive and assignment card.

Altering clothing.
Feb. 27, 1877, c. 69, v. 19, p. 243.
Sec. 1220, R.S.

891. It shall be lawful for the commanding officer of each regiment, whenever it may be necessary, to cause the coats, vests, and overalls or breeches which may from time to time be issued to and for his regiment to be altered and new made, so as to better to fit them to the persons respectively for whose use they shall be delivered; and for defraying the expense of such alteration to cause to be deducted and applied out of the pay of such persons a sum or sums not exceeding twenty-five cents for each coat, eight cents for each vest and for each pair of overalls or breeches.[1]

Limit of cost.
Mar. 2, 1889, v. 25, p. 831.

892. Hereafter the regimental price fixed for altering and fitting soldiers' clothing shall not exceed the cost of making the same at the clothing depots.[1] *Act of March 2, 1889 (25 Stat. L., 831).*

Clothing allowances and deductions.
Apr. 24, 1816, c. 69, ss. 7, 8, v. 4, p. 298.
May 15, 1872, c. 161, s. 3, v. 17, p. 117.
Sec. 1302, R.S.

893. The money value of all clothing overdrawn by the soldier beyond his allowance shall be charged against him, every six months, on the muster roll of his company, or on his final statements if sooner discharged, and he shall receive pay for such articles of clothing as have not been issued to him in any year, or which may be due to him at the time of his discharge, according to the annual estimated value thereof. The amount due him for clothing, when he draws less than his allowance, shall not be paid to him until his final discharge from the service.[2]

Clothing balances; payment on discharge.
May 15, 1872, s. 4, v. 17, p. 117.
Sec. 1308, R.S.

894. The amounts of * * * clothing balances accumulating to the soldier's credit under section thirteen hundred and two, shall, when payable to him upon his discharge, be paid out of the appropriations for "Pay of the Army" for the then current fiscal year.

Tobacco.
Mar. 3, 1865, s. 6, v. 13, p. 497.
Sec. 1301, R.S.

895. The amount due from any enlisted man for tobacco sold to him at cost prices by the United States shall be deducted from his pay in the manner provided for the settlement of clothing accounts.

Subsistence stores, credit sales.
July 28, 1866, s. 25, v. 14, p. 336.
Sec. 1300, R.S.

896. The amount due from any enlisted man for articles designated by the inspectors-general of the Army, and sold to him on credit by commissaries of subsistence, shall be deducted from the payment made to him next after such sale shall have been reported to the Paymaster-General.[3]

---

[1] Paragraph 263, Army Regulations of 1895, requiring deductions to be made from the pay of soldiers in favor of "tradesmen" who, when "relieved from ordinary military duty," are authorized to make or repair soldiers' uniforms, *held*, to authorize stoppages, not only for dues to tailors who are in the military service, but for dues to civilian tailors. Dig. Opin. J. A. G., 720, par. 4; Circular 8, A. G. O., 1896.

[2] For regulations respecting clothing accounts see paragraphs 1286 and 1303–1309, Army Regulations of 1901.

[3] For rules respecting sales on credit see paragraphs 1428, 1429, 1431, 1436, and 1438, Army Regulations of 1901.

A stoppage is distinguished from a forfeiture or fine; and an executive stoppage,

897. The cost of repairs or damages done to arms, equipments, or implements shall be deducted from the pay of any officer or soldier in whose care or use the same were when such damages occurred, if said damages were occasioned by the abuse or negligence of said officer or soldier.

For damage to arms.
Feb. 8, 1815, c. 38, s. 7, v. 3, p. 204.
Sec. 1303, R.S.

ASSIGNMENTS OF PAY.

898. No assignment of pay by a noncommissioned officer or private, previous to his discharge, shall be valid.

Soldiers' pay not assignable.
May 8, 1792, c. 37, s. 4, v. 1.
Sec. 1291, R.S.

HISTORICAL NOTE.—A system of payments to troops by means of regimental paymasters had been prescribed by several resolutions of Congress during the Government under the Articles of Confederation. The office of Paymaster-General had also been established, but had ceased to exist prior to the organization of the Government under the Constitution, the office and duties of Paymaster-General having been merged in those of Commissioner of Army Accounts by a resolution of Congress dated March 3, 1787. The system of regimental paymasters, established during the war of the Revolution, was recognized and continued in the military force authorized by the act of September 29, 1789 (1 Stat. L., 95). A regiment of infantry and a battalion of artillery were added to the establishment by the act of April 30, 1790 (ibid., 119), to each of which a paymaster was attached, with the proviso that the paymaster, in common with the other officers of the regimental staff, should be selected from subalterns of the line. An additional regiment of infantry was authorized by the act of March 3, 1791 (ibid., 222), with the same organization, and three additional regiments of infantry and a squadron of dragoons were added to the existing establishment by the act of March 5, 1792 (ibid., 241), the infantry regiments having the organization prescribed by the act of April 30, 1790. As no paymaster was authorized for the squadron of dragoons it is presumed that payments to that organization were made by an officer detailed for the purpose.

By section 3 of the act of May 8, 1792 (1 Stat. L., 280), a paymaster with the rank and pay of major was authorized, who was "to reside near the headquarters of the troops of the United States." He was required to give a bond in the sum of $20,000, and his duties were defined in the same enactment. By section 3 of the act of March 3, 1797 (ibid., 507), the title of Paymaster-General was conferred upon this officer, who was to receive the pay and allowances already authorized by law. By section 7 of the act of May 28, 1798 (ibid., 558), passed in contemplation of war with France, the rank

---

or stoppage by order, can not be imposed for an offense. But it is entirely legal to stop against a soldier's pay, under the Army Regulations, an amount required to reimburse the United States for loss on account of damage done to public property, while at the same time bringing the soldier to trial by court-martial for the offense involved. Dig. Opin. J. A. G., 720, par. 3. Gratiot *v.* U. S., 15 Peters, 336; McKnight *v.* U. S., 98 U. S., 180.

Pay due an officer or soldier can legally be stopped only by reason of an accountability to the United States (XVI Opin. Att. Gen., 477). Thus it can not be stopped to reimburse a hospital fund for money stolen, such fund, like a company fund, not being public money. Dig. Opin. J. A. G., 721, par. 8.

The United States is not authorized to stop against the pay of an officer or soldier an amount of personal indebtedness to another officer or soldier, though such indebtedness may have grown out of the relations of the military service. Thus, in the absence of a sentence of court-martial forfeiting the same, an officer's pay can not legally be stopped with a view to the reimbursement of enlisted men who have deposited with him money for safe-keeping, which he has failed to return when required, the officer being accountable for the same in a personal capacity only. Ibid., par. 2375.

Authorized stoppages will be entered on the rolls and paid in the following order:

1. Reimbursements to the United States for the loss or damage to arms, equipments, or other public property, the nature of which will be clearly stated, extra issues of clothing, transportation, subsistence, expense of apprehending deserters.
2. Amounts paid post exchange and laundrymen at recruit rendezvous.
3. Reimbursements to individuals (as the paymaster, for instance).
4. Forfeitures for desertion, and fines by sentence of court-martial. Par. 1568, A. R., 1901.

and pay of lieutenant-colonel was conferred upon the incumbent of the office of Paymaster-General, and deputy paymasters were authorized, in addition to the regimental paymasters. By section 3 of the act of March 16, 1802 (2 ibid., 132), passed with a view to reduce and fix the military peace establishment, provided for a paymaster of the Army; he was to be assisted by seven paymasters and two assistants, who were to be attached to districts; the deputy paymasters and assistants were to be detailed from the line, and were to receive additional pay at the rate of $30 and $10 per month, respectively.

The distribution of clothing to the Army was vested in the Pay Department by section 8 of the act of March 16, 1802 (2 ibid., 132), and section 9 of the act of January 11, 1812 (ibid., 671); this duty continued to be performed by the Pay Department until it was transferred to the Quartermaster's Department by the act of May 18, 1826 (4 ibid., 173).

Provision was made for the payment of the troops during the war of 1812 by the appointment of as many district paymasters as the President might deem necessary; if taken from the line these officers were to receive $30 per month additional pay; if appointed from civil life, they were to receive the pay and emoluments of majors of infantry. Act of May 16, 1812, 2 Stat. L., 735. The Pay Department was established, *eo nomine*, by section 3 of the act of April 24, 1816 (3 ibid., 297), and was to consist of a Paymaster-General, who, with the regiment and battalion paymasters, was to constitute the Pay Corps. The regimental and battalion paymasters were given the rank of majors of infantry, and were to be selected from subalterns of the line or from civil life; provision was made in this act for clerical service by a clause authorizing the detail of noncommissioned officers as paymasters' clerks, who, while so employed, were to receive double pay. Fourteen paymasters were added to the department by the act of March 2, 1821 (ibid., 615), and three by the act of July 4, 1836 (5 ibid., 117). The twenty-fifth section of the act of July 5, 1838 (5 ibid., 256), made provision for the expansion of the department, to meet the emergency of a sudden increase in the strength of the Army, by authorizing the President to appoint such number of additional paymasters as he might deem necessary "to pay the troops with sufficient punctuality;" such increase, however, was not "to exceed one for every two regiments of militia or volunteers," and the additional paymasters were to be continued in service only so long as their services might be required to pay militia and volunteers. The substance of this requirement was subsequently incorporated in the Revised Statutes as section 1184 of that enactment. By section 3 of the act of July 4, 1836, the President was authorized to assign any officer of the Army to duty as a paymaster, and the officer so assigned was to give bond, but was entitled to receive the pay and emoluments allowed by law to paymasters. By section 4 of the act of August 23, 1842 (ibid., 512), the number of majors in the department was reduced to fourteen.

The duties of the officers of the Pay Department were defined by section 4 of the act of April 24, 1816 (3 ibid., 297), and by the act of July 14, 1832 (4 ibid., 580), bonds were required and paymasters brought under the Articles of War by section 6 of the act of April 24, 1816 (3 ibid., 297). The rank indicated by their pay and allowances was conferred upon officers of this department by section 13 of the act of March 3, 1847 (9 ibid., 184), and the restriction in respect to the exercise of command, which is embodied in section 1183 of the Revised Statutes, appeared originally in the same enactment. By section 12 of the same act two deputy paymasters-general (lieutenant-colonels) were added to the establishment. At the close of the war with Mexico the organization of the department was fixed at one Paymaster-General (colonel), two deputy paymasters-general (lieutenant-colonels), and twenty-five paymasters with the rank of major, and the officers of the department were placed upon the same footing in respect to tenure of office as officers of other disbursing departments of the Army. By the same enactment the bonds of paymasters were required to be renewed at least once in every four years, and as much oftener as the President might direct.

The needs of the department were met during the period of the war of the rebellion by the appointment of additional paymasters under the authority conferred by section 25 of the act of July 5, 1838 (sec. 1184, Revised Statutes). At the general reorganization of the Army in 1866 the personnel of the department was established at one Paymaster-General (brigadier-general), two assistant paymasters-general (colonels), two deputy paymasters-general (lieutenant-colonels), and sixty paymasters with the rank of major. The Paymaster-General was to be selected from the corps, and the vacancies in the grade of major were to be filled by the appointment of persons who had served as additional paymasters during the war of the rebellion. Secs. 18 and 23, act of July 28, 1866, 14 Stat. L., 335. At the reduction of 1869 it was provided by section 6 of the act of March 3, 1869 (15 ibid., 318), that there should be no more appointments or promotions in the department until the further order of Congress, but this requirement was modified by the act of June 4, 1872 (17 ibid., 219), which authorized the appointment of a Paymaster-General with the rank of colonel to fill an existing vacancy, and by the act of March 2, 1875 (18 ibid., 338), and joint resolution No. 7 of March 2, 1875 (ibid., 524), which fixed the number of paymasters at fifty. The rank of brigadier-general was restored to the office of Paymaster-General by the act of July 22, 1876 (19 ibid., 95), and the restriction established by the act of March 3, 1869, was finally removed by the act of March 3, 1877 (ibid., 270).

A gradual reduction in the strength of the department was provided for in the acts of March 3, 1883 (22 Stat. L., 451), and July 5, 1884 (23 ibid., 108), by authorizing the voluntary retirement of paymasters of over twenty years' service, and by a requirement that there should be no more original appointments to the grade of lieutenant-colonel and major until the number of officers in the department had been reduced to thirty-five and the organization of the department was thereafter to be as follows: one paymaster-general (brigadier-general), two assistant paymasters-general (colonels), three deputy paymasters-general (lieutenant-colonels), and twenty-nine paymasters (majors). By the act of July 16, 1892 (27 ibid., 175), the number of majors was reduced to twenty-five, by the act of February 12, 1895 (28 ibid., 655), it was still further reduced to twenty, which was declared to be the number authorized by law.

By section 21 of the act of February 2, 1901 (31 Stat. L., 754), the permanent strength of the department was fixed at one paymaster-general with the rank of brigadier-general, three assistant Paymasters-General with the rank of colonel, four deputy paymasters-general with the rank of lieutenant-colonel, twenty paymasters with the rank of major, and twenty-five paymasters with the rank of captain, mounted. A system of details was also established by the operation of which the permanent commissioned personnel of the department will be replaced, as vacancies occur, by officers detailed from the line of the Army for duty in the Pay Department.

CHAPTER XXI.

THE MEDICAL DEPARTMENT.[1]

Par.
899–901. Organization.
902–906. Appointments, promotions, examinations.
907–909. Contract surgeons, dental surgeons.
910–913. Duties.
914–924. The Hospital Corps.
925–928. The Nurse Corps (female).
929–931. Hospitals.
932–933. Purchases.
934, 935. Sales of medical supplies.
936–939. The Army and Navy Hospital.
940–941. The Army Medical Museum.
942–952. Artificial limbs.

ORGANIZATION.

Par.
899. Composition.
900. Volunteer surgeons.
901. Rank.
902. Contract surgeons.
903, 904. Dental surgeons.

Composition. Feb. 2, 1901, s. 18, v. 31, p. 752. Sec. 1168, R.S.

899. The Medical Department shall consist of one Surgeon-General with the rank of brigadier-general, eight assistant surgeons-general with the rank of colonel, twelve deputy surgeons-general with the rank of lieutenant-colonel, sixty surgeons with the rank of major, two hundred and forty assistant surgeons with the rank of captain and first lieutenant, the Hospital Corps as now authorized by law and the Nurse Corps. *Sec. 18, act of February 2, 1901 (31 Stat. L., 752).*

Volunteer surgeons. *Ibid.*

900. On or after the passage of this act the President may appoint for duty in the Philippine Islands fifty surgeons of volunteers with the rank and pay of major, and one hundred and fifty assistant-surgeons of volunteers with the rank and pay of captain mounted, for a period of two years: *Provided*, That so many of these volunteer medical officers as are not required shall be honorably discharged the service whenever, in the opinion of the Secretary of War, their services are no longer needed. *Ibid.*

---

[1] For a note containing the statutory history of the Medical Department see end of chapter.

Rank and precedence.
July 5, 1884, v. 23, p. 111.

901. Officers of the Medical Department shall take rank and precedence in accordance with date of commission or appointment, and shall be so borne on the official Army Register. *Act of July 5, 1884 (23 Stat. L., 111).*

APPOINTMENTS, PROMOTIONS, EXAMINATIONS.

Par.
902. Appointments, examinations.
903. Promotion after five years' service.
904. The same, examinations.
Par.
905. Credit for service.
906. Relative rank on appointment.

Examinations.
June 30, 1834, c. 133, s. 1, v. 4, p. 714.
Sec. 1172, R.S.

902. No person shall receive the appointment of assistant surgeon unless he shall have been examined and approved by an army medical board, consisting of not less than three surgeons or assistant surgeons, designated by the Secretary of War; and no person shall receive the appointment of surgeon unless he shall have served at least five years as an assistant surgeon in the Regular Army, and shall have been examined and approved by an army medical board, consisting of not less than three surgeons, designated as aforesaid.[1]

Promotion after five years' service.
Mar. 2, 1867, c. 145, s. 5, v. 14, p. 423; June 23, 1874, s. 4, v. 18, p. 244.
Sec. 1170, R.S.

903. Assistant surgeons who have served five years as surgeons or assistant surgeons in the volunteer forces [shall][2] be eligible to promotion to the grade of captain. *Sec. 4, act of June 23, 1874 (18 Stat. L., 244).*

Examination of assistant surgeons for promotion.
V. 26, p. 562; sec. 2, July 27, 1892, v. 27, p. 276.

904. Before receiving the rank of captain of cavalry, assistant surgeons shall be examined, under the provisions of an act approved October first, eighteen hundred and ninety, entitled "An act to provide for the examination of certain officers of the Army and to regulate promotions therein."[3] *Sec. 2, act of July 27, 1892 (27 Stat. L., 276).*

Credit for service.
Feb. 2, 1901, s. 18, v. 31, p. 752.

905. The period during which any assistant surgeon shall have served as a surgeon or assistant surgeon in the Volunteer Army during the war with Spain, or since, shall be counted as a portion of the five years' service required to entitle him to the rank of captain. *Sec. 18, act of February 2, 1901 (31 Stat. L., 752).*

---

[1] No allowance will be made for the expenses of persons undergoing examination, but those who receive appointments will be entitled to travel allowances in obeying the first order assigning them to duty. Par. 1573, A. R., 1901.

[2] The word "shall" omitted from the roll.

[3] Section 1172, Revised Statutes, provides that "no person shall receive the appointment of surgeon * * * unless he shall have been examined and approved by an army medical board." The act of October 1, 1890 (26 Stat. L., 562), provides that "should the officer fail in his physical examination and be found incapacitated for service by reason of physical disability contracted in the line of duty, he shall be retired with the rank to which his seniority entitled him to be promoted." An assistant surgeon reported by one board as "not qualified physically," and by a subsequent board as "incapacitated for active service," is not entitled to be retired as if he had passed examination, though he continues on the active list for several years, and requests examination for promotion. Steinmetz *v.* U. S., 33 Ct. Cls., 404.

Relative rank. *Ibid.*

906. Nothing in this section shall affect the relative rank for promotion of any assistant surgeon now in the service, or who may hereafter be appointed therein, as determined by the date of his acceptance of appointment or commission and as fixed in accordance with existing law and regulations. *Ibid.*

CONTRACT SURGEONS—DENTAL SURGEONS.

Contract surgeons. *Ibid.*

907. In emergencies the Surgeon-General of the Army, with the approval of the Secretary of War, may appoint as many contract surgeons as may be necessary, at a compensation not to exceed one hundred and fifty dollars per month.[1] *Sec. 17. Ibid.*

Contract dental surgeons. *Ibid.*

908. The Surgeon-General of the Army, with the approval of the Secretary of War, is hereby authorized to employ dental surgeons to serve the officers and enlisted men of the Regular and Volunteer Army, in the proportion of, not to exceed one for every one thousand of said Army, and not exceeding thirty in all. Said dental surgeons shall be employed as contract dental surgeons under the same terms and conditions applicable to army contract surgeons, and shall be graduates of standard medical or dental colleges, trained in the several branches of dentistry, of good moral and professional character, and shall pass a satisfactory professional examination. *Ibid.*

The same. Examination. Supervision. *Ibid.*

909. Three of the number of dental surgeons to be employed shall be first appointed by the Surgeon General, with the approval of the Secretary of War, with reference to their fitness for assignment, under the direction of the Surgeon-General, to the special service of conducting the examination and supervising the operations of the others; and for such special service an extra compensation of sixty dollars per month will be allowed: *Provided further*, That dental-college graduates now employed in the Hospital Corps, who have been detailed for a period of not less than twelve months to render dental service to the Army, and who are shown by the reports of their superiors to have rendered such service satisfactorily, may be appointed contract dental surgeons without examination.[1] *Ibid.*

---

[1] This enactment replaces section 2 of the act of May 12, 1898 (30 Stat. L., 400), *in pari materia.* The office of contract surgeon was first established by regulation, but their compensation has been provided for in the annual acts of appropriation for the support of the Army. Such provision ceased to be made in the act of July 16, 1892 (27 Stat. L., 175), and, until May 12, 1898, when their employment was again authorized by law.

A "contract" or "acting assistant" surgeon is not a military officer and has no military rank or status. He is amenable, indeed, to the military jurisdiction when employed with the Army in the field *in time of war*, but he is in fact no part of the military establishment, but is simply a civilian employed by the United States, under a special contract for his personal services as a medical attendant to the troops. When not serving with troops before the enemy he has no other relation to the military organization or the Government than that established by the terms of his contract, made in accordance with the Army Regulations. He is not subject to military orders in general, like an officer or soldier, but only to such orders or directions as properly pertain to the peformance of his particular duties. He is of course not eligible to be detailed as a member of a military court. As a civilian, however, he is entitled to the *per diem* allowance, etc., when duly attending a court-martial as a witness. Dig. Opin. J. A. G., par. 384.

DUTIES.

Assignment to duty.
Sec. 3, July 27, 1892, v. 27, p. 277.

910. Medical officers of the Army may be assigned by the Secretary of War to such duties as the interests of the service may demand.[2]

Professional attendance on families of officers, etc.
July 5, 1884, v. 23, p. 112.

911. The medical officers of the Army and contract surgeons shall whenever practicable attend the families of the officers and soldiers free of charge. *Act of July 5, 1884* (*23 Stat. L., 112*).

Supervision of cooking.
Mar. 3, 1863, c. 78, s. 8, v. 12, p. 744.
Sec. 1174, R. S.

912. The officers of the Medical Department of the Army shall unite with the officers of the line, under such rules and regulations as shall be prescribed by the Secretary of War, in superintending the cooking done by the enlisted men; and the Surgeon-General shall promulgate to the officers of said corps such regulations and instructions as may tend to insure the proper preparation of the ration of the soldier.

Right of command.
Feb. 11, 1847, c. 8, s. 8, v. 9, p. 125.
Sec. 1169, R. S.

913. Officers of the Medical Department of the Army shall not be entitled, in virtue of their rank, to command in the line or in other staff corps.[3]

---

[1] For regulations fixing the status and regulating the employment and duties of contract and dental surgeons see par. 1574 to 1589, Army Regulations, of 1901.

[2] The Medical Department, under the direction of the Secretary of War, is charged with the duty of investigating the sanitary condition of the Army and making recommendations in reference thereto, with the duty of caring for the sick and wounded, making physical examinations of officers and enlisted men, the management and control of military, the recruitment, instruction and control of the Hospital Corps and of the Army Nurse Corps (female), and furnishing all medical and hospital supplies, except for public animals. Par. 1570, A. R., 1901.

The medical officer of a command is responsible (within reasonable limits) for the health of the men composing it. Where, in the course of the proper and regular performance of his function, he excuses men from duty on account of sickness or disability, the commanding officer should almost as a matter of course accept his action as conclusive and final. If he refuses to do so and orders on duty a soldier thus excused, he assumes the responsibility of any material injury that may thus result to the individual or the service, and, if injury results in fact, is amenable to trial for the military offense involved. Dig. Opin. J. A. G., par. 1658.

[3] An officer of the Pay or Medical Department can not exercise command, except in his own department; but by virtue of his commission he may command all enlisted men like other commissioned officers. Par. 18, A. R., 1901.

THE HOSPITAL CORPS.

Par.
914. Composition.
915. Hospital stewards, number.
916–917. The same, increase.
918. The same, selection from volunteers.
919. The same, rank and pay.

Par.
920. Examination.
921. The same, volunteer service.
922. Privates, duties.
923. The same, pay and allowance.
924. Acting hospital stewards.

The Hospital Corps.
Mar. 1, 1887, v. 24, p. 435; Mar. 16, 1895, v. 29, p. 61.

914. The Hospital Corps[1] of the United States Army shall consist of hospital stewards, acting hospital stewards, and privates; and all necessary hospital services in garrison, camp, or field (including ambulance service) shall be performed by the members thereof, who shall be regularly enlisted in the military service; said corps shall be permanently attached to the Medical Department.[2] *Act of March 1, 1887 (24 Stat. L., 435).*

Hospital stewards.
Mar. 1, 1887, v. 24, p. 435, Mar. 16, 1896, v. 29, p. 61.

915. The Secretary of War is empowered to appoint as many hospital stewards as, in his judgment, the service may require; but not more than one hospital steward shall be stationed at any post or place without special authority of the Secretary of War. There shall be no appointments of hospital stewards until the number of hospital stewards shall be reduced below one hundred, and thereafter the number of such officers shall not exceed one hundred. *Act of March 16, 1896 (29 Stat. L., 61).*

The same.
June 2, 1898, v. 30, p. 428.

916. All provisions of law limiting the number of hospital stewards in service at any one time to one hundred * * * are hereby suspended during the existing war: *Provided*, That the increase of hospital stewards under this act shall not exceed one hundred. *Act of June 2, 1898 (30 Stat. L., 428).*

The same.
Feb. 2, 1901, s. 18, v. 31, p. 753.

917. The Secretary of War is authorized to appoint in the Hospital Corps, in addition to the two hundred hospital stewards now allowed by law, one hundred hospital stewards. *Sec. 18, Act of February 2, 1901 (31 Stat. L., 753).*

The same.
Ibid.

918. Men who have served as hospital stewards of volunteers of volunteer regiments, or acted in that capacity during and since the Spanish-American war for more than six months, may be appointed hospital stewards in the Regular Army: *And provided further*, That all men so appointed shall be of good moral character and shall have passed a satisfactory mental and physical examination. *Ibid.*

---

[1] The act of March 11, 1864 (13 Stat. L., 20), made provision uniform for a system of ambulances for the armies in the field, by the establishment of an Ambulance Corps, to be composed of officers and enlisted men detailed for such service from the regiments of the line. The composition, distribution, and duties of the corps were regulated by statute, supplemented, in some matters by Executive regulations and orders. The act of March 11, 1864, though passed to meet an emergency of war, was not restricted to a time of war and so continued in existence until replaced by the enactment establishing the Hospital Corps.

[2] Sections 1179, 1180, and 1181 of the Revised Statutes were repealed by the act of March 1, 1887 (24 Stat. L., 435), creating the Hospital Corps. By the act of March 8, 1898 (30 ibid., 261), the enlisted men of the Hospital Corps are required to be included in the authorized enlisted strength of the Army.

Rank and pay. Sec. 3, Mar. 1, 1887, v. 24, p. 435.

919. The pay of hospital stewards shall be forty-five dollars per month, with the increase on account of length of service as is now or may hereafter be allowed by law to other enlisted men. They shall have rank with ordnance-sergeants and be entitled to all the allowances appertaining to that grade. *Sec. 3, act of March 1, 1887 (24 Stat. L., 435).*

Examination. Sec. 4, Mar. 1, 1887, v. 24, p. 435. Sec. 4, *ibid.*

920. No person shall be appointed a hospital steward unless he shall have passed a satisfactory examination before a board of one or more medical officers as to his qualifications for the position, and demonstrated his fitness therefor by service of not less than twelve months as acting hospital steward; and no person shall be designated for such examination except by written authority of the Surgeon-General. *Sec. 4, ibid.*

The same. June 2, 1898, v 30, p. 428.

921. All provisions of law * * * requiring that a person to be appointed a hospital steward shall first demonstrate his fitness therefor by actual service of not less than twelve months as acting hospital steward, * * * are hereby suspended during the existing war. *Act of June 2, 1898 (30 Stat. L., 428).*

Privates; duties. Sec. 5, *ibid.*

922. The Secretary of War is empowered to enlist, or cause to be enlisted, as many privates of the Hospital Corps as the service may require, and to limit or fix the number, and make such regulations for their government as may be necessary; and any enlisted man in the Army shall be eligible for transfer to the Hospital Corps as a private.[1] They shall perform duty as wardmasters, cooks, nurses, and attendants in hospitals, and as stretcher bearers, litter bearers, and ambulance attendants in the field, and such other duties as may by proper authority be required of them.[2] *Sec. 5, ibid.*

---

[1] *Held*, that a person enlisted in the Hospital Corps, or transferred to it from another part of the Army under the authority of the act of March 1, 1887, could not be transferred out of it, or back again to the organization from which he was transferred originally, without a breach of contract. The authority to *transfer* to this corps is expressly granted by the statute, but there is no statutory authority for depriving transferred members, by undoing their transfers, of the positions given them according to the express law. Dig. Opin. J. A. G., par. 1449. For regulations prepared under the authority conferred by this section see paragraphs 1590 to 1620, Army Regulations of 1901, and the Manual for the Medical Department.

[2] *Held*, that neither the act organizing the Hospital Corps, of March 1, 1887, nor paragraph 1410, Army Regulations, 1895 (par. 1606, A. R., 1901), relating to the assignment of privates of the corps as nurses, etc., was to be construed as restricting

Pay and allowances.
Sec. 6, *ibid.*; July 13, 1892, v. 27, p. 120.

923. The pay of privates of the Hospital Corps shall be eighteen dollars per month, with the increase on account of length of service as is now or may hereafter be allowed by law to other enlisted men; they shall be entitled to the same allowances as a corporal of the arm of service with which on duty. *Sec. 6, ibid.*

Acting hospital stewards.
Sec. 7, Mar. 1, 1887, v. 24, p. 436.

924. Privates of the Hospital Corps may be detailed as acting hospital stewards by the Secretary of War, upon the recommendation of the Surgeon-General, whenever the necessities of the service require it; and while so detailed their pay shall be twenty-five dollars per month, with increase as above stated.[1] Acting hospital stewards, when educated in the duties of the position, may be eligible for examination for appointment as hospital stewards as above provided. *Sec. 7, ibid.*

THE NURSE CORPS.

Par.
925. Composition.
926, 927. Pay and allowances.
Par.
928. Travel expenses.

Composition, appointment, etc.
Feb. 2, 1901, s. 19, v. 31, p. 753.

925. The Nurse Corps (female) shall consist of one superintendent, to be appointed by the Secretary of War, who shall be a graduate of a hospital training school having a course of instruction of not less than two years, whose term of office may be terminated at his discretion, whose compensation shall be one thousand eight hundred dollars per annum, and of as many chief nurses, nurses, and reserve nurses as may be needed. Reserve nurses may be assigned to active duty when the emergency of the service demands, but shall receive no compensation except when on such duty: *Provided*, That all nurses in the Nurse Corps shall be appointed or removed by the Surgeon-Gen-

---

the use of nurses to attendance upon patients within the hospital, but that nurses might legally be furnished from such privates to attend officers at their quarters. Ibid., par. 1452.

Where a hospital is not supplied with enough privates of the Hospital Corps to do the necessary police duty which, under section 5 of the act organizing the corps, of March 1, 1887, they may properly be required to perform, *held*, that *convalescents* at the hospital may, in the discretion of the surgeon in charge and by his prescription and direction, be employed to assist in such duty. Ibid., par. 1453.

[1] The act of March 1, 1887 (24 Stat. L., 435), provides for "acting hospital stewards" as a separate grade in the corps, but does not prescribe any mode of filling that grade other than by declaring that "privates" of the corps may be detailed as such "acting" stewards. *Held*, therefore, that when such a private was so detailed he ceased to be a private of the corps and became at once the acting hospital steward constituted by the act; and if discharged while so detailed, should be discharged as an "acting hospital steward," receiving travel pay as such. Dig. Opin. J. A. G., par. 1447.

A private who is detailed as an acting hospital steward, as provided in the act of March 1, 1887, is to be regarded as promoted to that grade, and the extra pay, travel pay, and retired pay to which he may be entitled upon discharge or retirement are to be computed on the basis of the pay provided for an acting hospital steward. 6 Compt. Dec., 807.

eral, with the approval of the Secretary of War; that they shall be graduates of hospital training schools, and shall have passed a satisfactory professional, moral, mental, and physical examination. *Sec. 19, act of February 2, 1901 (31 Stat. L., 753).*

926. The pay and allowances of nurses and of reserve nurses when on active service shall be forty dollars per month when on duty in the United States, and fifty dollars per month when without the limits of the United States. *Ibid.*

Pay and allowances. *Ibid.*

927. They shall be entitled to quarters, subsistence, and medical attendance during illness, and they may be granted leaves of absence for thirty days, with pay, for each calendar year; and when serving as chief nurses their pay may be increased by authority of the Secretary of War, such increase not to exceed twenty-five dollars per month. Payments to the Nurse Corps shall be made by the Pay Department. *Ibid.*

The same. *Ibid.*

928. The superintendent and nurses shall receive transportation and necessary expenses when traveling under orders. *Ibid.*

Travel expenses. *Ibid.*

HOSPITALS.[1]

929. Hospital matrons * * * may be employed in post or regimental hospitals in such numbers as may be necessary.[1]

Matrons. Mar. 16, 1802, s. 4, v. 2, p. 134. **Sec. 1239, R.S.**

930. Hospital matrons in post and regimental hospitals shall receive ten dollars a month * * *. One ration in kind or by commutation shall be allowed to each.[2]

Hospital matrons. Mar. 16, 1802, v. 2, p. 134; Aug. 3, 1861, v. 12, p. 288; July 4, 1864, v. 12, p. 416, s. 19; Feb. 2, 1901, v. 31, p. 753. **Sec. 1277, R.S.**

---

[1] HOSPITAL BUILDINGS.

A building will not be erected for nor occupied as a hospital until the opinion of a medical officer has been obtained in writing upon the suitableness of site and proposed arrangement. If the commanding officer dissent from this opinion he will return it to the surgeon of the post with his reasons indorsed thereon, who will forward it, through military channels, to the Surgeon-General of the Army. Par. 1644, A. R., 1901.

Hospitals will be erected at permanent posts in accordance with plans and specifications furnished by the Surgeon-General, approved by the Secretary of War. Par. 1645, ibid.

When alterations of or additions to hospitals are necessary the surgeon of the post, after obtaining from the quartermaster an estimate of cost, will transmit plans and specifications, with proposed modifications, through military channels to the Secretary of War. Similar action will be taken upon quarters for hospital stewards. Par. 1646, ibid.

No portion of any hospital building at a military post will be used or occupied as quarters, nor will any mess be permitted or maintained therein except such as may be necessary for patients and enlisted men there on duty. Par. 1650, ibid.

[1] The authority for the employment of female nurses, conferred by section 1239, Revised Statutes, was replaced by section 19, act of February 2, 1901, paragraphs 925 to 927 *ante*. The rate of compensation for female nurses, fixed at 40 cents per day by section 1277 of the Revised Statutes, was replaced by the rates of compensation established in section 19 of the act of February 2, 1901 (31 Stat. L., 753), paragraph 926 *ante*.

Quarters for hospital stewards.
Feb. 27, 1893, v. 27, p. 484.

931. Hereafter the posts at which such quarters [for hospital stewards] shall be constructed shall be designated by the Seccetary of War, and such quarters shall be built by contract, after legal advertisement, whenever the same is practicable. *Act of February 27, 1893 (27 Stat. L., 484).*

PURCHASES OF MEDICAL SUPPLIES.

Purchases.
Mar. 2, 1901, v. 31, p. 905.

932. Hereafter, except in cases of emergency or where it is impracticable to secure competition, the purchase of all supplies for the use of the various departments and posts of the Army and of the branches of the army service shall only be made after advertisement, and shall be purchased where the same can be purchased the cheapest, quality and cost of transportation and the interests of the Government considered; but every open-market emergency purchase made in the manner common among business men which exceeds in amount two hundred dollars shall be reported for approval to the Secretary of War under such regulations as he may prescribe.[1] *Act of March 2, 1901 (31 Stat. L., 905).*

Purchases for sick in hospital.
Aug. 3, 1861, c. 42, s. 14, v. 12, p. 289.
Sec. 1175, R. S.

933. Such quantities of fresh or preserved fruits, milk, butter, and eggs as may be necessary for the proper diet of the sick may be allowed in hospitals. They shall be provided under such rules as the Surgeon-General, with the approval of the Secretary of War, shall prescribe.[2]

SALES OF MEDICAL SUPPLIES.

Civilian employees may purchase medicines.
Mar. 3, 1883, v. 22, p. 459.

934. Civilian employees of the Army stationed at military posts may, under regulations to be made by the Secretary of War, purchase necessary medical supplies, prescribed by a medical officer of the Army, at cost, with ten per centum added.[3] *Act of March 3, 1883 (22 Stat. L., 459).*

Sales to National Homes.
June 11, 1896, v. 29, p. 445.

935. Hereafter, upon proper application therefor, the Medical Department of the Army is authorized to sell medical and hospital supplies at its contract prices to the National Home for Disabled Volunteer Soldiers. *Act of June 11, 1896 (29 Stat. L., 445).*

---

[1] For general provisions in respect to the procurement of supplies by contract see the chapter entitled CONTRACTS AND PURCHASES. For special authority to sell unserviceable medical and hospital stores and other property see the act of August 6, 1894 (28 Stat. L., 241). The above enactment repeals and replaces the act of February 27, 1893 (27 ibid., 485), *in pari materia.*

[2] For statutes authorizing an addition to the ration in the case of patients in hospital who are too sick to be subsisted on the army ration, and for a similar increase in case of enlisted men in camp during recovery from low conditions of health, consequent upon service in unhealthy regions or in debilitating climates, see the act of February 26, 1900 (31 Stat. L., 212).

[3] For regulations governing such purchases see paragraph 1638 Army Regulations of 1901.

THE HOT SPRINGS RESERVATION IN ARKANSAS.

THE ARMY AND NAVY HOSPITAL.

Hot water to be supplied to bath houses off the reservation.

Not to interfere with Army and Navy Hospital supply.

J. R. 14, Mar. 3, 1887, v. 24, p. 647,

936. The Secretary of the Interior * * * is hereby authorized to continue to furnish to the bath houses located off the permanent reservation at Hot Springs, Arkansas, a sufficient amount of hot water for drinking and bathing purposes: *Provided*, That furnishing such bath houses shall in no way interfere with the supply of hot water necessary for the use of the Army and Navy Hospital and for the bath houses located upon the permanent reservation subject to any further action of Congress on the subject.[1] *Joint resolution No. 14, March 3, 1887 (24 Stat. L., 647).*

Hot Springs, Ark.

Water may be furnished three additional bath houses.

J. R. No. 8, Mar. 26, 1888, v. 26, p. 619.

937. The Secretary of the Interior is hereby authorized and directed to utilize the hot water upon the reservation at Hot Springs, Arkansas, not necessary for the Army and Navy Hospital, the bath houses erected and to be erected upon said reservation, and the bath houses now erected and furnished with hot water by authority of the Secretary off said reservation, by permitting its use by not exceeding three bath houses to be erected by individuals below and off said Hot Springs Reservation (the expense of obtaining said water to be borne by the proprietors of said bath houses), said water to be furnished under the same restrictions and regulations as now govern the supply of hot water furnished to the bath houses above and off said reservation, and that the water rents for all bath houses be increased to thirty dollars per tub per annum: *Provided*, That the new bath houses which may be so erected shall not be owned or controlled by any person, company, or corporation which may be the owner or interested in any other bath house on or near the Hot Springs Reservation; and if the ownership or control of any such bath house be transferred to any person or corporation owning or interested in any other bath house on or near said reservation, the Secretary of the Interior shall, for that cause, deprive said bath house of the hot water, and also any other bath house in which any such person or corporation shall be in-

Rent.

Proviso.

New houses not to be owned by persons interested in houses on reservation.

---

[1] For statutes creating the reservation on Hot Springs Mountain, Arkansas, see section 4 of the act of March 3, 1877 (19 Stat. L., 378); act of December 16, 1878 (20 ibid., 258), and section 3, act of June 16, 1880 (21 ibid., 289).

terested, and shall cancel any lease from the United States which any such person or corporation may hold or be interested in. *Joint resolution No. 8, March 26, 1888 (25 Stat. L., 619).*

Establishment of Army and Navy Hospital at Hot Springs, Ark. Appropriation. June 30, 1882, v. 22, p. 121.

938. That one hundred thousand dollars be, and hereby is, appropriated for the erection of an Army and Navy Hospital at Hot Springs, Arkansas, which shall be erected by and under the direction of the Secretary of War, in accordance with plans and specifications to be prepared and submitted to the Secretary of War by the Surgeons-General of the Army and Navy; which hospital, when in a condition to receive patients, shall be subject to such rules, regulations, and restrictions as shall be provided by the President of the United States: *Provided further*, That such hospital shall be erected on the Government reservation at or near Hot Springs, Arkansas.[1] *Act of June 30, 1882 (22 Stat. L., 121).*

Proviso.

Estimates. Aug. 4, 1886, v. 24, p. 245.

939. Estimates for this service shall hereafter be submitted as a part of the military establishment.[2] *Act of August 4, 1886 (24 Stat. L., 245).*

THE ARMY MEDICAL MUSEUM.

THE LIBRARY OF THE SURGEON-GENERAL'S OFFICE.

Building. Apr. 7, 1866, v. 14, p. 23.

940. For the purchase of the property in Washington City, known as Ford's Theater, for the deposit and safe-keeping of documentary papers relating to the soldiers of the Army of the United States, and of the museum of the Medical and Surgical Department of the Army,[3] * * * dollars. *Act of April 7, 1866, (14 Stat. L., 23).*

---

[1] For regulations prepared under the authority conferred by this statute see General Orders, No. 60, A. G. O., of 1892, and the orders amendatory thereof. Under the present regulations for the government of the Army and Navy General Hospital at Hot Springs, Ark., *civil employees* of the Government are not eligible to admission. Dig. Opin. J. A. G., par. 1454.

Under the act of June 30, 1882 (22 Stat. L., 121), and the regulations made by the President in pursuance thereof, enlisted men of the Army undergoing treatment in the Army and Navy Hospital at Hot Springs, Ark., are entitled to commutation of rations at the rate of 30 cents per day only, and not at the rate of 40 cents per day under General Orders, No. 137 A. G. O., of July 26, 1899. 6 Compt. Dec., 642.

[2] The act of August 4, 1886 (24 Stat. L., 245), contained the requirements that the sums therein appropriated should be disbursed under the direction of the Secretary of War. Appropriations for the construction and repair of hospitals since that of June 13, 1890 (26 Stat. L., 154), have been applicable to the Army and Navy Hospital at Hot Springs, Ark.

The United States not being vested, by reservation or cession, with exclusive jurisdiction over the site of the General Hospital at Hot Springs, though owning the land, *held*, in November, 1892, that the courts and judicial officers of Arkansas had substantially the same jurisdiction and authority to issue and execute process to and upon the military and naval persons stationed or commorant at the hospital, as in cases of civilians there resident or commorant. Dig. Opin. J. A. G., par. 1456.

[3] The museum and library are supported by annual appropriations of Congress.

941. Binding for the departments of Government shall be done in plain sheep or cloth, except that record and account books may be bound in Russia leather, sheep fleshes, and skivers when authorized by the head of a department: *Provided*, The libraries of the Surgeon-Generals office, * * * may have books for the exclusive use of said libraries bound in half Turkey, or material no more expensive.[1] *Sec. 86, act of January 12, 1895 (28 Stat. L., 601).*

Binding.
Jan. 12, 1895, s. 86, v. 28, p. 601.

ARTIFICIAL LIMBS.

Par.
942. Artificial limbs.
943. To be renewed once in three years.
944–945. Commutation.
946. Commutation to be paid directly to soldier, etc.
947. Transportation to persons for whom artificial limbs are furnished.
Par.
948–949. Transportation to be furnished by Quartermaster-General.
950. Trusses.
951. Application for, how made.
952. Trusses to be purchased by Surgeon-General.

942. Every officer, soldier, seaman, and marine who was disabled during the war for the suppression of the rebellion, in the military or naval service, and in the line of duty, or in consequence of wounds received or disease contracted therein, and who was furnished by the War Department since the seventeenth day of June, eighteen hundred and seventy, with an artificial limb or apparatus for resection, who was entitled to receive such limb or apparatus since said date, shall be entitled to receive a new limb or apparatus at the expiration of every three years thereafter, under such regulations as have been or may be prescribed by the Surgeon-General of the Army.[2] *Act of March 3, 1891 (26 Stat. L., 1103).*

Artificial limbs.
To be renewed once in three years.
July 2, 1868, v. 15, s. 14, p. 237; June 17, 1890, v. 16, s. 1, p. 153; June 30, 1870, v. 16, p. 175; Mar. 23, 1876, v. 19, p. 8; Feb. 27, 1877, v. 19, p. 252; Mar. 3, 1891, v. 26, p. 1103.
Sec. 4787, R.S.

943. Every officer, soldier, seaman, and marine who, in the line of duty in the military or naval service of the United States, shall have lost a limb or sustained bodily injuries depriving him of the use of any of his limbs, shall receive once every three years an artificial limb or appliance, or commutation therefor, as provided and limited by existing laws, under such regulations as the Sur-

The same.
Mar. 23, 1876, v. 19, p. 8; Aug. 15, 1876, s. 1, v. 19, p. 203; Mar. 3, 1891, v. 26, p. 1103.

---

[1] The appropriation for "the library of the Surgeon-General's office is in terms sufficiently specific to include the purchase of books of reference and periodicals which are necessary for, or appropriate to, that library, notwithstanding the provisions of section 3 of the act of March 15, 1898, which prohibits the purchase of books of reference and periodicals for the use of any executive department, or other Government establishment not under an executive department, unless payment therefor is specifically provided for in the application. 6 Compt. Dec., 736; ibid., 423.

[2] The clause added to section 4787 of the Revised Statutes by the act of February 27, 1877 (19 Stat. L., 240), was repealed by the act of March 3, 1891 (26 Stat. L., 1103).

geon-General of the Army may prescribe; and the period of three[1] years shall be held to commence with the filing of the first application after the seventeenth day of June, in the year eighteen hundred and seventy. *Sec. 1, act of August 15, 1876 (19 Stat. L., 203).* The * * * sums * * * hereby appropriated shall be expended and disbursed under the direction of the Surgeon-General of the Army, and in accordance with existing laws.[2] *Act of March 23, 1876 (19 Stat. L., 8).*

Appropriation to be disbursed by Surgeon-General.

Commutation rates for limb, etc.
June 17, 1870, c. 132, s. 1, v. 16, p. 153, Aug. 15, 1876, c. 300, v. 19, p. 203.
Sec. 4788, R. S.

944. Every person entitled to the benefits of the preceding section may, if he so elects, receive, instead of such limb or apparatus, the money value thereof, at the following rates, namely: For artificial legs, seventy-five dollars; for arms, fifty dollars; for feet, fifty dollars; for apparatus for resection, fifty dollars.

Commutation to those who can not use artificial limb.
Ibid., s. 3.
Feb. 27, 1877, c. 69, v. 19, p. 252.
Sec. 4790, R. S.

945. Every person in the military or naval service who lost a limb during the war of the rebellion, or is entitled to the benefits of section forty-seven hundred and eighty-seven, but from the nature of his injury is not able to use an artificial limb, shall be entitled to the benefits of section forty-seven hundred and eighty-eight, and shall receive money commutation as therein provided.

Commutation to be paid directly to soldier, etc. No fee to agent.
Mar. 3, 1891, v. 26, p. 979.

946. Hereafter in case of commutation the money shall be paid directly to the soldier, sailor, or marine, and no fee or compensation shall be allowed or paid to any agent or attorney.[3] *Act of March 3, 1891 (26 Stat. L., 979).*

Transportation for persons to whom artificial limbs are furnished.
July 28, 1866, c. 305, v. 14, p. 342; Mar. 23, 1876, c. 30, v. 19, p. 8; Aug. 15, 1876, c. 300, s. 2, v. 19, p. 204; Feb. 27, 1877, c. 69, v. 19, p. 252.
Sec. 4791, R. S.

947. The Secretary of War is authorized and directed to furnish to the persons embraced by the provisions of section forty-seven hundred and eighty-seven, transportation to and from their homes and the place where they may be required to go to obtain artificial limbs provided for them under authority of law.

Transportation furnished by Quartermaster-General.
Sec. 2, Aug. 15, 1876, v. 19, p. 204; Feb. 27, 1877, v. 19, p. 252; Mar. 3, 1891, v. 26, p. 1103.

948. The transportation allowed for having artificial limbs fitted shall be furnished by the Quartermaster-General of the Army, the cost of which shall be refunded from the appropriations for the purchase of artificial limbs.

Transportation to be furnished by Quartermaster-General.

949. Necessary transportation to have artificial limbs fitted shall be furnished by the Quartermaster-General of the Army, the cost of which shall be refunded out of any money appropriated for the purchase of artificial limbs: *Provided*, That this act shall not be subject to the provisions of an act entitled "an act to increase pensions," approved June eighteenth, eighteen hundred and seventy four. *Sec. 2, act of August 15, 1876 (19 Stat. L., 204).*

---

[1] Period reduced to three years by the act of March 3, 1891 (26 Stat. L., 1103).

[2] See XVII, Opin. Att. Gen.

[3] The requirement of section 4789, Revised Statutes, that the Commissioner of Pensions shall be furnished by the Surgeon-General with lists of beneficiaries with a view to their payment, was superseded by the the act of August 15, 1876 (19 Stat. L., 244), requiring payments on account of artificial limbs, etc., to be made by the latter officer.

Sec. 2, Aug. 15, 1876, v. 19, p. 204; 1874, ch. 298, 18 Stat. L., 78.
Sec. 4791, R.S.

TRUSSES.

950. Every soldier of the Union Army, or petty officer, seaman, or marine in the naval service, who was ruptured while in the line of duty during the late war for the suppression of the rebellion, or who shall be so ruptured thereafter in any war, shall be entitled to receive a single or double truss of such style as may be designated by the Surgeon-General of the United States Army as best suited for such disability; and whenever the said truss or trusses so furnished shall become useless from wear, destruction, or loss, such soldier, petty officer, seaman, or marine shall be supplied with another truss on making a like application as provided for in section two of the original act of which this is an amendment: *Provided*, That such application shall not be made more than once in two years and six months: *And provided further*, That sections two and three of the said act of May twenty-eighth, eighteen hundred and seventy-two, shall be construed so as to apply to petty officers, seamen, and marines of the naval service, as well as to soldiers of the Army.

Trusses for soldiers and sailors.
Mar. 3, 1879, v. 20, p. 353.
Sec. 1176, R.S.
Proviso.

951. Application for such truss shall be made by the ruptured soldier to an examining surgeon for pensions, whose duty it shall be to examine the applicant, and when found to have a rupture or hernia, to prepare and forward to the Surgeon-General an application for such truss without charge to the soldier.

Application for, how made.
May 28, 1872, c. 228, s. 2, v. 17, p. 164.
Sec. 1177, R.S.

952. The Surgeon-General is authorized and directed to purchase the trusses required for such soldiers, at wholesale prices, and the cost of the same shall be paid upon the requisition of the Surgeon-General out of any moneys in the Treasury not otherwise appropriated.

Trusses to be purchased by Surgeon-General.
May 28, 1872, c. 228, s. 3, v. 17, p. 164.
Sec. 1178, R.S.

HISTORICAL NOTE.—The medical and surgical needs of the troops composing the revolutionary armies were, at first, supplied by the surgeons who were attached to the several regimental organizations, and no provision seems to have been made for medical or surgical supervision, for the procurement and distribution of supplies, or for the establishment of a general hospital service until 1775, when, by a resolution of Congress dated July 27, 1777, the office of Director-General was established, who was charged with the duties subsequently performed by the Purveyor-General of Medical Supplies. The same enactment provided for a medical staff composed of four surgeons and twenty surgeon's mates, for an apothecary and two storekeepers, and for hospital attendance at the rate of one nurse for every ten patients. Under the authority thus conferred several general hospitals were established at points conveniently near to the several theaters of military operations. The medical establishment thus created was modified by subsequent resolutions of Congress; the changes caused by the resolution of April 22, 1777, being so extensive as to constitute a complete reorganization of the department. As thus modified, however, the department continued in existence until the disbandment of the revolutionary armies in 1783. For the ten years succeeding the organizantion of the Government under the Constitution the medical and surgical necessities of the troops were met by the medical officers attached to the several organizations constituting the military establishment.

The act of March 2, 1799 (1 Stat. L., 721), passed in contemplation of a war with France, but which was never fully executed, made provision for a complete medical establishment consisting of a physician-general, an apothecary-general, and a purveyor, together with such numbers of hospital surgeons and mates as the service might require, who were made liable to duty in the field as well as in the hospitals provided for in the statute. The act of March 2, 1799, was repealed and a Medical Department established by section 3 of the act of February 23, 1802 (2 ibid., 133), which fixed the strength of the department at two surgeons and twenty-five surgeon's mates, who were "to be attached to garrisons and posts, and not to corps." During the war of 1812 the necessities of the case were met by a temporary increase of the department and by the allowance of surgeons to regiments called into the service for the period of the war. By section 7 of the act of March 3, 1813 (ibid., 819), a physician and Surgeon-General was authorized, whose powers and duties were to be prescribed by the President of the United States. The office of apothecary-general was created by the act of April 24, 1816 (3 ibid., 297), but was abolished by the act of March 3, 1821. The office of Surgeon-General was created by section 2 of the act of April 14, 1818 (ibid., 426).

At the general reduction of 1821 the Medical Department was reorganized and made to consist of one Surgeon-General, eight surgeons, and forty-five assistant surgeons. Sec. 2, act of March 2, 1821, 3 ibid., 615. By the act of June 28, 1832 (4 ibid., 500), four surgeons and ten surgeon's mates were added. The act of June 30, 1834 (ibid., 714), contained a requirement that all candidates for appointment, or for promotion to the grade of surgeon, should pass a professional examination as a condition precedent to such appointment or promotion. By this enactment the pay of surgeons was fixed at that allowed to majors, assistant surgeons were to receive for the first five years' service the pay of first lieutenants, and after five years' service the pay of captains. The examination for promotion to the grade of surgeon was to take place after five years' service in the grade of assistant surgeon. By section 33 of the act of July 5, 1838 (5 ibid., 256), seven additional surgeons were authorized, but by section 4 of the act of August 23, 1842 (ibid., 512), a reduction of two surgeons and ten assistant surgeons was ordered, the displaced officers being allowed three months' pay when honorably discharged.

At the outbreak of the war with Mexico, under authority conferred by section 6 of the act of February 11, 1847 (9 ibid., 123), two surgeons and twelve assistant surgeons were added to the regular establishment, and regimental medical officers were authorized for the volunteer troops at the rate of one surgeon and one assistant surgeon to each regiment, their service being restricted to the period of the existing war. By the act of March 3, 1849 (ibid., 351), ten assistant surgeons were authorized, and the requirement of the act of July 19, 1848, prohibiting the filling of vacancies in the department was repealed. By the act of August 16, 1850 (11 ibid., 51), four surgeons and eight assistant surgeons were added to the establishment; the force of hospital stewards was increased to such number as the service might require, not to exceed one to each military post; and cooks and nurses, detailed from the enlisted men, were, for the first time, allowed extra-duty pay for service in post hospitals.

At the outbreak of the war of the rebellion regimental medical officers were again authorized, one surgeon and one assistant being allowed to each regiment; by the act of July 2, 1862 (12 Stat. L., 502), an additional assistant was authorized.

By section 3 of the act of July 22, 1861 (ibid., 269), one surgeon to each brigade was authorized, but by the act of July 2, 1862 (ibid., 502), these officers were merged in the corps of forty surgeons and one hundred and twenty assistant surgeons created by that statute for the period of the war.

By the act of June 21, 1861 (ibid., 378), four surgeons and four assistant surgeons were added to the department. By the act of April 16, 1862 ibid., 378), the rank of brigadier-general was conferred upon the Surgeon-General; the office of assistant surgeon-general, with the rank and pay of colonel of cavalry was created and the addition of ten surgeons and twenty assistant surgeons was authorized; a corps of medical inspectors was created, consisting of one inspector-general of hospitals (colonel) and eight assistants (lieutenant-colonels), whose duties were defined by law, and who were to hold office during the continuance of the war. By the act of December 27, 1862 (ibid., 633), eight medical inspectors were added and authority was conferred upon these officers to discharge enlisted men for disability contracted in the military service. By this statute a corps of medical cadets was established which continued to exist until its gradual disbandment was brought about by the passage of the general act of reorganization in 1866. By the act of May 20, 1862 (ibid., 378), six medical storekeepers were authorized. By the act of February 25, 1865 (13 ibid., 437), medical directors of armies in the field and of military departments were allowed the rank and pay of colonels, and those attached to army corps the rank and pay of lieutenant-colonels.

An ambulance service for the armies in the field was provided by the act of March 11, 1864 (13 ibid., 20). It was composed of officers and enlisted men detailed from the several army corps and was carried on under the direction of their respective medical directors. The duties of the corps were regulated by statute, and had to do, exclusively, with the transportation of the sick and wounded and the removal of the wounded from the battlefield. The corps ceased to exist at the disbandment of the volunteer armies in 1865.

At the general reorganization of 1866 (sec. 17, act of July 28, 1866, 14 ibid., 334), the strength of the department was fixed at one Surgeon-General, one assistant surgeon-general, one chief medical purveyor, and four assistant purveyors (lieutenant-colonels), sixty surgeons (majors), one hundred and fifty assistant surgeons, and five medical storekeepers; it was also provided that three years' service, instead of five, should be required of assistant surgeons before attaining the grade of captain. The act of March 3, 1869 (15 ibid., 318), contained a requirement prohibiting appointments and promotions in the staff until otherwise ordered by Congress; but this requirement was repealed as to the Medical Department by section 4 of the act of June 23, 1874 (18 ibid., 244), which fixed the strength of the medical establishment as follows: One Surgeon-General, one assistant surgeon-general, and one chief medical purveyor (colonel), two assistant medical purveyors (lieutenant-colonels), fifty surgeons, and one hundred and fifty assistant surgeons, who were to receive the rank of captain after five years' service, and five medical storekeepers; the number of contract surgeons was fixed in this statute at seventy-five. By the act of June 26, 1876 (19 ibid., 61), the number of assistant surgeons was fixed at one hundred and twenty-five, and the corps of medical storekeepers was discontinued, the reduction in both cases being accomplished by a requirement forbidding the filling of vacancies until the prescribed limit of numbers had been reached. By this statute the number of surgeons with the rank of colonel was increased to four, and the number with the rank of lieutenant-colonel to eight, the vacancies thus created to be filled by promotion according to seniority.

By the act of March 1, 1887 (24 ibid., 435), the Hospital Corps was created; by the act of July 27, 1892 (27 ibid., 276), the titles of office in the Medical Department were rearranged, officers holding the rank of colonels being arranged as assistant surgeons-general and those having the rank of lieutenant-colonels as deputy surgeons-general, and thereafter medical officers were to be assigned by the Secretary of War to such duties as the necessities of the service might require. By the act of August 18, 1894 (28 ibid., 403), the number of assistant surgeons was reduced to one hundred and ten; but by the act of May 12, 1898 (930 ibid., 406), the number of officers of this grade was increased to one hundred and twenty-five, and authority was conferred upon the Surgeon-General to employ such number of contract surgeons as might be necessary.

By section 18 of the act of February 2, 1901 (31 Stat. L., 752), the permanent strength of the department was fixed at one Surgeon-General with the rank of brigadier-general, eight assistant surgeons-general with the rank of colonel, twelve deputy surgeons-general with the rank of lieutenants-colonel, sixty surgeons with the rank of major, and two hundred and forty assistant surgeons with the rank of captain and first lieutenants mounted. A Nurse Corps (female), and a corps of dental contract surgeons were also added to the department.

CHAPTER XXII.

THE CORPS OF ENGINEERS.[1]

Par.
953–972. The Corps of Engineers.
973–976. Civil engineers, draftsmen, etc.
977. Chief of Engineers to use Congressional Library.
978–994. The public buildings and grounds.
995–1010. The Washington Aqueduct.
1011–1020. The Engineer Commissioner of the District of Columbia.
1021–1028. The Light-House Board.
1029–1043. The Mississippi River Commission.
1044–1048. The Missouri River Commission.
1049–1081. The California Débris Commission.
1082–1085. The Isthmian Canal Commission.
1086–1090. Fortifications.
Par.
1091–1097. The navigable waters of the United States.
1098–1103. River and harbor works.
1104–1106. Contracts and purchases. Lands.
1107–1110. Miscellaneous provisions.
1111–1113. Operation of canals, etc.
1114–1117. Bridges over navigable waters.
1118–1121. Harbor lines.
1122–1131. Injuries to Government works; obstructions to navigation.
1132–1133. The same, sunken vessels.
1134–1146. Deposits in New York Harbor.
1147–1150. Harbor regulations for the District of Columbia.

THE CORPS OF ENGINEERS.

Par.
953. Organization.
954–959. Appointments, promotions, examinations.
960. Transfers; limits of duty.
Par.
961–970. Enlisted men of engineers.
971. Pontoons, vehicles, tools, arms, etc.
972. Travel expenses.

ORGANIZATION.

Composition.
Feb. 2, 1901, s. 22, v. 31, p. 754.
Sec. 1151, R. S.

953. The Corps of Engineers shall consist of one Chief of Engineers with the rank of brigadier-general, seven colonels, fourteen lieutenant-colonels, twenty-eight majors, forty captains, forty first lieutenants, and thirty second-lieutenants.[2] *Sec. 22, Act of February 2, 1901 (31 Stat., L., 754).*

---

[1] For a note containing the statutory history of the Corps of Engineers see end of chapter.

[2] Section 22 of the act of February 2, 1901 (31 Stat. L., 754), contained the requirement that "vacancies remaining in the grades of first and second lieutenant may be filled by transfer of officers of the Regular Army, subject to such professional examination as may be approved by the Secretary of War."

APPOINTMENTS—PROMOTIONS—EXAMINATIONS.

954. The Chief of Engineers shall be selected as now provided by law.[1] *Ibid.*

Chief of Engineers, appointment, *Ibid.*

955. Hereafter vacancies in the Corps of Engineers in all other grades above that of second lieutenant shall be filled, as far as possible, by promotion according to seniority from the Corps of Engineers. *Ibid.*

956. Vacancies in the grade of second lieutenant not filled by transfer shall be left for future promotions from the corps of cadets at the United States Military Academy. *Ibid.*

957. When any lieutenant of the Corps of Engineers or Ordnance Corps has served fourteen years' continuous service as lieutenant, he shall be promoted to the rank of captain on passing the examination provided by the preceding section,[2] but such promotion shall not authorize an appointment to fill any vacancy, when such appointment would increase the whole number of officers in the corps beyond the number fixed by law; nor shall any officer be promoted before officers of the same grade who rank him in his corps.

Promotions of lieutenants after fourteen years' service.
Mar. 3, 1853, c. 98, s. 9, v. 10, p. 219; Mar. 3, 1863, c. 78, ss. 3, 4, v. 12, p. 743; Feb. 27, 1877, c. 69, v. 19, p. 243.
Sec. 1207, R. S.

EXAMINATIONS FOR PROMOTION.

958. No officer of the Corps of Engineers or Signal Corps below the rank of field officer shall be promoted to a higher grade until he shall have been examined and approved by a board of three engineers, senior to him in rank. If an engineer officer fail on such examination he shall be suspended from promotion for one year, when he shall be reexamined before a like board. In case of failure on such reexamination, he shall be dismissed from the service.[3] *Sec. 7, act of October 1, 1890 (26 Stat. L., 653).*

Examinations for promotion.
Mar. 3, 1863, c. 78, s. 3, v. 12, p. 743; Oct. 1, 1890, s. 7, v. 26, p. 653.
Sec. 1206, R. S.

959. The examination of officers of the Corps of Engineers and Ordnance Department who were officers or enlisted men in the regular or volunteer service, either in the Army, Navy, or the Marine Corps, during the war of the rebellion, shall be conducted by boards composed in the same manner as for the examination of other officers of their respective corps and department; and the examinations shall embrace the same subjects prescribed for all other officers of similar grades in the Corps of Engineers

Examination of engineer or ordnance officers who served during the rebellion. Subjects.
Sec. 2, July 27, 1892, v. 27, p. 276.

---

[1] Section 1193, Revised Statutes.

[2] Section 1206, Revised Statutes.

[3] For statutory regulations in respect to examinations for promotions, see the titl "Examinations for promotion" in the chapter entitled THE STAF DEPARTMENTS.

and Ordnance Department, respectively. *Sec. 2, act of July 27, 1892 (27 Stat. L., 276).*

TRANSFERS.

Engineers; limits of duty. Apr. 10, 1806, c. 20, art. 63, v. 2, p. 367. **Sec. 1158, R. S.**

960. Engineers shall not assume nor be ordered on any duty beyond the line of their immediate profession, except by the special order of the President. They may, at the discretion of the President, be transferred from one corps to another, regard being paid to rank.

ENLISTED MEN OF ENGINEERS.

Organization May 15, 1846, v. 9, s. 12, p. 750; Aug. 6, 1861, s. 2, v. 12, p. 318; June 30, 1864, s. 4, v. 13, p. 144; July 28, 1866, s. 20, v. 14, p. 335; Mar. 2, 1899, s. 7, v. 30. p. 979; Feb. 2, 1901, s. 11, v. 31, p. 750.

961. The enlisted force of the Corps of Engineers shall consist of one band and three battalions of engineers. *Sec. 11, act of February 2, 1901 (31 Stat. L., 750).*

Part of line of the Army Mar. 2, 1899, s. 7, v. 30, p. 979; Feb. 2, 1901, s. 22, v. 31, p. 754.

962. The enlisted force provided in section eleven of this act and the officers serving therewith shall constitute a part of the line of the Army. *Sec. 22, act of February 2, 1901 (31 Stat. L., 754).*

Band. Feb. 2, 1901, s. 11, v. 31, p. 750.

963. The engineers' band shall be organized as now provided by law for bands of infantry regiments. *Sec. 11, act of February 2, 1901 (31 Stat. L., 750)..*

The same. Mar. 2, 1899, s. 4, v. 30, p. 977.

964. Each infantry band shall consist of one chief musician, one principal musician, one drum major, who shall have the pay and allowances of a first sergeant, four sergeants, eight corporals, one cook, and twelve privates. *Sec. 4, act of March 2, 1899 (30 Stat. L., 977).*

Engineer battalion. Feb. 2, 1901, s. 11, v. 31, p. 750.

965. Each battalion of engineers shall consist of one sergeant-major, one quartermaster-sergeant, and four companies. *Sec. 11, act of February 2, 1901 (31 Stat. L., 750).*

Officers of battalion. July 28, 1866, c. 299, s. 29, v. 14, p. 335; May 15, 1846, c. 21, s. 4, v. 9, p. 13; Aug. 3, 1861, c. 42, s. 4, v. 12, p. 287; Aug. 6, 1861, c. 57, s. 2, v. 12, p. 317. **Sec. 1156, R.S.**

966. Battalion adjutants, battalion quartermasters, and appropriate officers to command the companies and battalions of engineer soldiers shall be detailed from the Corps of Engineers. *Sec. 11, act of February 2, 1901 (31 Stat. L.,* 750).

Battalion staff, pay. *Ibid.* **Sec. 1156, R.S.**

967. Officers detailed from the Corps of Engineers to serve as battalion adjutants and battalion quartermasters and commissaries shall, while so serving, receive the pay and allowances herein authorized for battalion staff officers of infantry regiments. *Ibid.*

Engineer company. *Ibid.* **Sec. 1155, R.S.**

968. Each company of engineers shall consist of one first sergeant, one quartermaster-sergeant with the rank, pay, and allowances of sergeant, eight sergeants, ten corporals, two musicians, two cooks, thirty-eight first-class and thirty-eight second-class privates. *Ibid.*

969. The President may, in his discretion, increase the number of sergeants in any company of engineers to twelve, and the number of corporals to eighteen, the number of first-class privates to sixty-four, and the number of second-class privates to sixty-four, but the total number of enlisted men authorized for the whole Army shall not, at any time, be exceeded. *Ibid.*

Increase.
Ibid.

THE BATTALION OF ENGINEERS.

1. One company of bombardiers, sappers, and miners was authorized by the act of April 29, 1812 (2 Stat. L., 720), to be officered from the Corps of Engineers; this company was disbanded at the general reduction of 1821, act of March 2, 1821 (2 ibid., 615). A similar company, to be officered in the same manner, was authorized by the act of May 15, 1846 (9 ibid., 12); three additional companies were provided for in section 4 of the act of August 6, 1861 (10 ibid., 317). A sergeant-major, quartermaster-sergeant, and commissary-sergeant were authorized by section 4 of the act of June 20, 1864 (11 ibid., 144). By section 20 of the act of July 28, 1866 (14 ibid., 335), the enlisted establishment of the Corps of Engineers was fixed at five companies, with the battalion sergeant-major and quartermaster-sergeant already authorized by law. The grade of battalion commissary-sergeant was discontinued by section 10 of the act of July 15, 1870 (15 ibid., 318). Section 7 of the act of March 2, 1899 (30 Stat. L., 979), contained the requirement that the battalion of engineers and the officers serving therewith should constitute a part of the line of the Army; this provision was reenacted in section 22 of the act of February 1, 1901 (31 Stat. L., 754); by section 11 of the same enactment the enlisted force of the Engineer Corps was increased to three battalions of engineer troops and a band.
2. For the organization of the infantry band, see paragraph 964, *anté*.

970. The enlisted men of the engineer battalion shall be instructed in and perform the duties of sappers, miners, and pontoniers, and shall aid in giving practical instruction in those branches at the Military Academy. They may be detailed by the Chief of Engineers to oversee and aid laborers upon fortifications and other works in charge of the Engineer Corps, and, as fort keepers, to protect and repair finished fortifications.

Duties of engineer soldiers..
May 15, 1846, c. 21, s. 4, v. 9, p. 13; Aug. 3, 1861, c. 42, s. 4, v. 12, p. 287; Aug. 6, 1861, c. 57, s. 2, v. 12, p. 317; Mar. 3, 1863, c. 78, s. 1, v. 12, p. 743.
Sec. 1 57, R. S.

971. The Chief of Engineers is authorized, with the approval of the Secretary of War, to regulate and determine the number, quality, form, and dimensions of the necessary vehicles, pontoons, tools, implements, arms, and other supplies for the use of the battalions of engineer soldiers.

Chief Engineer to determine form, number, etc., of pontoons, tools, etc.
May 15, 1846, c. 21, s. 5, v. 9, p. 13; Aug. 3, 1861, c. 42, s. 4, v. 12, p. 287; Aug. 6, 1861, c. 57, s. 2, v. 12, p. 317; July 28, 1866, c. 299, s. 20, v. 14, p. 335; Feb. 2, 1901, s. 11, v. 31, p. 750. **Sec. 1152, R. S.**

972. For travel expenses of officers on journeys approved by the Chief of Engineers and made for the purpose of instruction, one thousand five hundred dollars: *Provided*, That the traveling expenses herein provided for shall be in lieu of mileage or other allowances. *Act of March 2, 1901 (31 Stat. L., 908).*

Travel expenses.
Mar. 2, 1901, v. 31, p. 908.

CIVIL ENGINEERS, DRAFTSMEN, ETC.

Par.
973. Employment.
974. Names, etc., to be reported to Congress.
Par.
975. Employment of retired officers.
976. Draftsmen, etc., in Engineer Bureau.

Employment of civil engineers.
Mar. 29, 1867, res. 27, v. 15, p. 28.
Sec. 5253, R. S.

973. The Chief of Engineers may, with the approval of the Secretary of War, employ such civil engineers, not exceeding five in number, for the purpose of executing the surveys and improvements of western and northwestern rivers, ordered by Congress, as may be necessary to the proper and diligent prosecution of the same; and the persons so employed may be allowed a reasonable compensation for their services, not to exceed the sum of three thousand dollars a year.

Names to be reported to Congress, etc.
Aug. 5, 1886, s. 8, v. 24, p. 335.

974. The Secretary of War shall report to Congress, at its next and each succeeding session thereof, the name and place of residence of each civilian engineer employed in the work of improving rivers and harbors by means and as the result of appropriations made in this and succeeding river and harbor appropriation bills, the time so employed, the compensation paid, and the place at and work on which employed. *Sec. 8, act of August 5, 1886 (24 Stat. L., 335).*

Employment of retired officers.
June 3, 1896, s. 7, v. 28, p. 235.

975. Section 2 of the act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes,[1] approved July thirty-first, eighteen hundred and ninety-four, shall not be so construed as to prevent the employment of any retired officer of the Army or Navy to do work under the direction of the Chief of Engineers of the United States Army in connection with the improvement of rivers and harbors of the United States, or the payment by the proper officer of the Treasury of any amounts agreed upon as compensation for such employment. *Section 7, act of June 3, 1896 (28 Stat. L., 235).*

Draftsmen, etc., in office of Chief of Engineers.
May 28, 1896, v. 29, p. 163.

976. And [for] the services of skilled draftsmen, civil engineers, and such other services as the Secretary of War may deem necessary may be employed only in the office of the Chief of Engineers to carry into effect the various appropriations for rivers and harbors, fortifications, and surveys to be paid from such appropriations: *Provided*, That * * * the Secretary of War shall each year, in the annual estimates, report to Congress the number of persons so employed and the amount paid to each.[1] *Act of May 28, 1896 (29 Stat. L., 163).*

---

[1] Section 2, act of July 31, 1894 (28 Stat. L., 205), par. 167, *ante*.

977. The Joint Committee of Congress on the Library is authorized to extend the use of the books in the Library of Congress to * * * the Chief of Engineers of the Corps of Engineers United States Army, resident in Washington, on the same conditions and restrictions as members of Congress are allowed to use the Library. *J. R., No. 41, August 28, 1890 (26 Stat. L., 678).*

Chief of Engineers may use books in Library of Congress.

Aug. 28, 1890, J. R. 41, v. 26, p. 678.

THE PUBLIC BUILDINGS AND GROUNDS.

Par.
978. Chief of Engineers to have charge.
979. Estimates.
980. Employees, restriction.
981. Control of banks of Potomac.
982. Regulations, by whom made.
983. Playgrounds for children.
984. Watchmen in public squares.
985. Ailanthus trees, prohibition.
986. Propagation of plants and shrubs.

Par.
987. Annual report of buildings, etc.
988. Furniture for Executive Mansion.
989. Annual inventory.
990, 991. Washington Monument, care, etc.
992. Washington Monument Society.
993. Extra pay prohibited.
994. Rules for use of aqueduct bridge.

978. The Chief of Engineers shall have charge of the public buildings and grounds in the District of Columbia, under such regulations as may be prescribed by the President through the War Department, except those buildings and grounds which are otherwise provided for by law.[2]

Chief of Engineers to have charge of public buildings and grounds.

Aug. 4, 1854, c. 242, s. 15, v. 10, p. 573; Mar. 2, 1867, c. 167, s. 2, v. 14, p. 466. **Sec. 1797, R.S.**

---

[1] The acts of August 5, 1882 (22 Stat. L., 240), and March 3, 1883 (22 Stat. L., 552), contained a similar provision, the amount in each case being fixed at $75,000. For a continuation of the same provision see the act of July 7, 1884 (23 Stat. L., 181), in which the amount appropriated was fixed at $56,000; the acts of March 3, 1885 (23 Stat. L., 412), July 31, 1886 (24 Stat. L., 195), March 3, 1887 (24 Stat. L., 617), July 11, 1888 (25 Stat. L., 280), February 26, 1889 (25 Stat. L., 730), July 11, 1890 (26 Stat. L., 252), March 3, 1891 (26 Stat. L., 932), July 16, 1892 (27 Stat. L., 208), and March 3, 1893 (27 Stat. L., 699), in which the amount appropriated was fixed at $60,000; July 31, 1894 (28 Stat. L., 188), March 2, 1895 (28 Stat. L., 789), and May 28, 1896 (29 Stat. L., 163), February 19, 1897 (ibid., 562), March 15, 1898 (30 Stat. L., 300), February 24, 1899 (ibid., 872), and April 17, 1900 (31 Stat. L., 115), in which the amount appropriated was fixed at $72,000.

The cost of services and articles needed in the office of the Chief of Engineers is not properly chargeable to any appropriation for river and harbor improvements, or for fortifications, or to any other appropriation for the military establishment, unless expressly authorized by law. 3 Dig. 2d Compt. Dec., 321.

[2] The act of August 14, 1876, transferred the duties relating to the care and superintendence of the Capitol building to the Architect of the Capitol, by the following provision: "That the Architect of the Capitol shall have the care and superintendence of the Capitol, including lighting, and shall submit, through the Secretary of the Interior, estimates thereof: *And provided further*, That all the duties relative to the Capitol building heretofore performed by the Commissioner of Public Buildings and Grounds shall hereafter be performed by the Architect of the Capitol, whose office shall be in the Capitol building." The act of March 3, 1877, contained the following provision on the same subject: "The Architect of the Capitol shall hereafter have the

Estimates and appropriations.
Aug. 4, 1854, c. 242, s. 15, v. 10, p. 573.
Sec. 1798, R. S.

979. All estimates for public buildings and grounds in charge of the Chief of Engineers shall be approved and submitted by the Secretary of War, through the Treasury Department, as other estimates, to the two Houses of Congress; and all appropriations which have been or may be hereafter made for repairs or improvements of the public buildings and grounds in the District of Columbia, and now in charge of the Chief of Engineers, shall be expended under the direction of the Secretary of War.

Employees in office of public buildings.
Mar. 3, 1871, c. 113, s. 1, v. 16, p. 479; May 8, 1872, c. 140, s. 1, v. 17, p. 65; Jan. 20, 1874, c. 11, v. 18, p. 4.
Sec. 1799, R. S.

980. The Chief of Engineers in charge of public buildings and grounds is authorized to employ in his office and about the public buildings and grounds under his control such number of persons for such employments, and at such rates of compensation, as may be appropriated for by Congress from year to year.

THE POTOMAC PARK.

Control of the bank of the Potomac.
Mar. 3, 1899, v. 30, p. 1106.

981. The following-described property shall be placed under the immediate jurisdiction and control of the Chief of Engineers of the United States: The banks of the Potomac River from the north line of the Arsenal grounds to the southern curb line of N street south; also five hundred linear feet of shore line in the flushing reservoir at the foot of Seventeenth street west, and west from the western curb of said street, including a levee one hundred feet wide. *Act of March 3, 1899 (30 Stat. L., 1106).*

Regulations for control of same.
Sec. 2, *ibid.*

982. That said Commissioners and the Chief of Engineers of the United States Army are hereby authorized and empowered to make all needful rules and regulations for the government and proper care of all the property placed in their charge and under their respective control by the provisions of section one of this act, and to annex such reasonable penalties to said rules and regulations as will

---

care and superintendence of the Capitol, including lighting, and shall submit through the Secretary of the Interior, annually, estimates thereof."

The officer in charge of the public buildings and grounds shall have the rank, pay, and emolument of a colonel. Act of March 3, 1873 (17 Stat. L., 535). Funds for the execution of this statute have been provided in subsequent acts of appropriation.

The act of June 30, 1898 (30 Stat. L., 533) contained a requirement directing an investigation to be made as to the feasibility of filtering the water supply of the city of Washington, and the Chief of Engineers was required to be associated, as consulting engineer, with the officer charged with the conduct of the investigation and the preparation of the report.

By the act of March 3, 1899 (30 Stat L., 1120), the Chief of Engineers was charged with the direction of the construction of the new building for the use of the Government Printing Office.

By the act of March 2, 1893 (27 Stat. L., 532), the Chief of Engineers was made, ex officio, a member of a commission to determine upon a plan for highways within the District of Columbia.

secure their enforcement; and also to make and enforce rules and regulations in regard to building and repairing wharves, the rental thereof, and the rate of wharfage.[1] All rents so collected shall be covered into the Treasury of the United States, one-half to be placed to the credit of the United States and one-half to the credit of the District of Columbia. No lease made under the provisions of this act shall extend beyond the period of ten years.[2]

That the Secretary of War is authorized to grant permission to the Department of Agriculture for the temporary occupation of such area or areas of Potomac Park, not exceeding a total of seventy-five acres in extent, as may not be needed in any one season for the reclamation or park improvement, the said areas to be used by the Department of Agriculture as testing grounds: *Provided*, That nothing herein contained shall be construed to change the essential character of the lands so used, which lands shall continue to be a public park, as provided in the act of Congress approved March third, eighteen hundred and ninety-seven: *And provided further*, That said area or areas shall be vacated by the Department of Agriculture at the close of any season upon the request of the Secretary of War: *And provided further*, That the entire park shall remain under the charge of the Secretary of War.

Playground for children.
Aug. 30, 1890, v. 26, p. 371.

983. The officer in charge of public buildings and grounds may authorize the temporary use of a portion of the Monument Grounds, or grounds south of the Executive Mansion or other reservations in the District of Columbia, for a children's playground, under regulations to be prescribed by him. *Act of August 30, 1890* (*26, Stat. L.*, *371*).

Watchmen to have police power.
Ag. 5, 1882. v. 2u2, p. 257

984. Hereafter all watchmen provided for by the United States Government for service in any of the public squares and reservations in the District of Columbia shall have and perform the same powers and duties as the Metropolitan police of the said District.[3] *Act of August 5, 1882* (*22 Stat. L.*, *257*).

Ailanthus trees.
Mar. 3, 1853, v. 10, p. 207.
Sec. 1830, R.S.

985. No more ailanthus trees shall be purchased for or planted in the public grounds.

---

[1] For jurisdiction of the Commissioners of the District of Columbia over certain wharf property and public spaces in the District of Columbia, see the act of March 3, 1899 (30 Stat. L., 1377), paragraph 1019 *post*.

[2] The Chief of Engineers is not and never has been vested with authority to grant licenses for the erection of wharves along the river front of the city of Washington.

[3] The authority of the Metropolitan police was extended to include "all public squares and places" by the act of July 21, 1876 (19 Stat. L., 102); see, also, act of March 3, 1877 (19 Stat. L., 346).

What trees, plants, etc., to be propagated.
June 20, 1878, v. 20, p. 220.

986. Hereafter only such trees, shrubs, and plants shall be propagated at the greenhouses and nursery as are suitable for planting in the public reservations, to which purpose only the said productions of the greenhouses and nursery shall be applied. *Act of June 20, 1878 (20 Stat. L., 220).*

Reports.
Mar. 3, 1829, c. 51, s. 3, v. 4, p. 363; Aug. 4, 1854, c. 242, s. 15, v. 10, p. 573; Mar. 3, 1859, c. 84, s. 1, v. 11, p. 435; June 25, 1860, c. 211, s. 1, v. 12, p. 106.
Sec. 1812, R.S.

987. The Chief of Engineers shall, as superintendent of public buildings and grounds, and as superintendent of the Washington Aqueduct, annually submit the following reports to the Secretary of War in time to accompany the annual message of the President to Congress, namely:

First. A report of his operations for the preceding year, with an account of the manner in which all appropriations for public buildings and grounds have been applied, including a statement of the number of public lots sold, or remaining unsold each year, of the condition of the public buildings and grounds, and of the measures necessary to be taken for the care and preservation of all public property under his charge.

Furniture for Executive Mansion.
May 22, 1826, s. 2, v. 4, p. 194.
Sec. 1829, R.S.

988. All furniture purchased for the use of the President's House shall be, as far as practicable, of domestic manufacture.

Inventory of property in Executive Mansion.
April 17, 1900, v. 31, p. 97.

989. Hereafter a complete inventory, in proper books, shall be made annually by the steward, under the direction of the officer in charge of public buildings and grounds, of all the public property in and belonging to the Executive Mansion, showing when purchased, use to which applied, cost, condition, and final disposition, to be submitted to Congress with annual report of the officer in charge of public buildings and grounds.[1] *Act of April 17, 1900 (31 Stat. L., 97).*

THE WASHINGTON MONUMENT.

Washington Monument, care and maintenance.
To be under Secretary of War.
Oct. 2, 1888, v. 25, p. 533.

990. For the care and maintenance of the Washington Monument and the operation of the elevator and machinery connected therewith, namely: For one custodian, at one hundred dollars per month, one steam engineer, at eighty dollars per month; one assistant steam engineer, at sixty dollars per month; one fireman, at fifty dollars per month; one assistant fireman, at forty-five dollars per month; one conductor of car, at seventy-five dollars per month; one attendant on floor, at forty-five dollars per month; one attendant on top, at forty-five dollars per month; three night and day watchmen, at sixty dollars each per month; * * * to be expended under the direction of the Secretary of War, who is hereby and hereafter charged with the custody, care, and protection of the monument. *Act of October 2, 1888* (*25 Stat. L.*, *533*).

---

[1] In view of the requirements of the acts of August 14, 1876 (19 Stat. L., 147), and March 3, 1877 (ibid., 298, note to paragraph 978, *ante*), which operated to define and restrict the jurisdiction of the Architect of the Capitol, it may be doubted whether the provision of section 1832, Revised Statutes, requiring a report to be made to that officer is now operative. The acts above referred to, taken in connection with section 1797 of the Revised Statutes, would seem to vest jurisdiction over public buildings outside the Capitol grounds in the Chief of Engineers and the officer charged, under his direction, with their immediate superintendence and control.

Joint commission dissolved. *Ibid.*

991. The joint commission created by the act of August second, eighteen hundred and seventy-six, for the completion of the Washington Monument, having completed the work intrusted to it, is, at its own request, dissolved, and the unexpended balances of appropriations for this work, as well as the amount herein appropriated, shall be expended under the direction of the Secretary of War. *Ibid.*

Washington National Monument Society continued.

992. The Washington National Monument Society is hereby continued with the same powers as provided in the act of August second, eighteen hundred and seventy-six, creating the joint commission aforesaid; and the Secretary of War is hereby directed to set apart a room for the deposit of the archives of the Washington National Monument Society (as also for the records of the joint commission dissolved) and for the continuous use of said society in the building now being erected by the said society with funds collected by it for its use and for the public comfort. *Ibid.*

Extra pay prohibited.
July 12, 1870, c. 251, s. 4, v. 16, p. 250.
Sec. 1835, R.S.

993. No pay or compensation other than is fixed by this title shall be allowed to any officer, employee, or laborer embraced within the provisions thereof.[1]

Regulations for use of aqueduct bridge.
Mar., 3, 1875, v. 18, p. 393.

994. The Chief Engineer is hereby directed to notify the Washington and Georgetown Railway Company to remove their railway track from the Washington aqueduct bridge over Rock Creek, within one year from the date of said notice; and said company shall make such removal within the year aforesaid, and have the right to lay their tracks along Twenty-sixth street from Pennsylvania avenue to M street north, and thence along M street into Georgetown, to connect with their tracks on Bridge street; and said Chief Engineer may establish and publish regulations prohibiting the passage of heavily loaded wagons and carriages over said bridge. *Act of March 3, 1875* (*18 Stat. L.*, *393*).

---

[1] Title XXI, Revised Statutes.

THE WASHINGTON AQUEDUCT.

Par.
995. Chief engineer to superintend.
996. Duties.
997. No extra compensation.
998. Offices.
999. Records.
1000. Reports.
1001. Regulation of water supply.
1002. Decisions of Chief of Engineers.
1003. Expenditure of appropriations.
1004. Use of water in public buildings.
1005. Diversion of water prohibited.
1006. Lands about reservoir.
1007. Opening of pipes; penalty.
1008. Breaking pipes; penalty.
1009. Contamination of water.
1010. Pipes for public buildings and for District of Columbia.

Chief of Engineers to have charge of Washington Aqueduct.

Mar. 3, 1859 c. 84, s. 1, v. 11, p. 435; June 25, 1860, c. 211, s. 1, v. 12, p. 106; Mar. 2, 1867, c. 167, s. 2, v. 14, p. 466; Mar. 30, 1867, c. 20, s. 3, v. 15, p. 12.
Sec. 1800, R.S.

995. The Chief of Engineers shall have the immediate superintendence of the Washington Aqueduct, together with all rights, appurtenances, and fixtures connected with the same, and belonging to the United States, and of all other public works and improvements in the District of Columbia in which the Government has an interest, and which are not otherwise specially provided for by law.[1]

Regulations may be prescribed by President.

May 2, 1828, c. 45, s. 4, v. 4, p. 266; Mar. 3, 1859, c. 84, s. 1, v. 11, p. 435; June 25, 1860, c. 211, s. 1, v. 12, p. 106; Mar. 30, 1867, c. 20, s. 3, v. 15, p. 12.
Sec. 1801, R.S.

996. He shall obey, in the discharge of the duties mentioned in the preceding section, such regulations, pursuant to law, as may be prescribed by the President, through the Department of War.

Chief of Engineers not to receive compensation.

Mar. 3, 1859, c. 84, s. 1, v. 11, p. 435.
Sec. 1807, R.S.

997. The Chief of Engineers shall receive no compensation, other than his regular pay as an officer of the Corps of Engineers, for the services required of him under the provisions of this title.

Apartments, stationery, etc.

Mar. 3, 1859, c. 84, s. 1, v. 11, p. 435.
Sec. 1808, R.S.

998. He shall be furnished official apartments in one of the public buildings in the city of Washington, as may be directed by the President, and shall be supplied by the Government with the stationery, instruments, books, and furniture which may be required for the performance of his duties.

Record of property to be kept.

Mar. 3, 1859, c. 84, s. 1, v. 11, p. 435.
Sec. 1809, R.S.

999. He shall keep in his office a complete record of all the lands and other property connected with or belonging to the Washington Aqueduct and other public works under his charge, together with accurate plans and surveys of the public grounds and reservations in the District of Columbia.[2]

---

[1] But see paragraph 1014, *post*, for compensation of Engineer Commissioner.

[2] For reports and estimates required of the Chief of Engineers in connection with the superintendence of the Washington Aqueduct, see paragraphs 64 and 987, *ante*.

Reports.
Mar. 3, 1829, c. 51, s. 3, v. 4, p. 363; Aug. 4, 1854, c. 242, s. 15, v. 10, p. 573; Mar. 3, 1859, c. 84, s. 1, v. 11, p. 435; June 25, 1860, c. 211, s. 1, v. 12, p. 106.
Sec. 1812, R.S.

1000. The Chief of Engineers shall, as Superintendent * * * of the Washington Aqueduct, annually submit the following reports to the Secretary of War in time to accompany the annual message of the President to Congress, namely:

* * * * *

Second. A report of the condition, progress, repairs, casualties, and expenditures of the Washington Aqueduct and other public works under his charge.

Chief of Engineers to regulate water supply.
May 2, 1828, c. 45, s. 4, v. 4, p. 266; Mar. 3, 1859, c. 84, s. 1, v. 11, p. 435
Sec. 1810, R.S.

1001. He and his necessary assistants are empowered to use all lawful means for the discharge of their duties; and, particularly, he shall have full control over the Washington Aqueduct, to regulate the manner in which the authorities of the District of Columbia may tap the supply of water to the inhabitants thereof; and he shall stop the same whenever it is found to be no more than adequate to the wants of the public buildings and grounds.

Right of appeal to Secretary of War from decision of Chief of Engineers.
Mar. 3, 1859, c. 84, s. 1, v. 11, p. 435.
Sec. 1811, R.S.

1002. His decision on all questions concerning the supply of water, as provided in the preceding section, shall be subject to appeal to the Secretary of War only.

Appropriations for aqueduct, etc.; how expended.
Mar. 3, 1859, c. 84, s. 1, v. 11, p. 435; June 18, 1862, res. No. 36, v. 12, p. 620; Mar. 30, 1867, c. 20, s. 3, v. 15, p. 12.
Sec. 1802, R.S.

1003. All moneys appropriated or hereafter appropriated for the Washington Aqueduct, and for the other public works in the District of Columbia, not otherwise expressly provided for by law, shall be expended under the direction of the Secretary of War.

Use of water in public buildings.
Mar. 3, 1883, v. 22, p. 615.

1004. All officers in charge of public buildings in the District of Columbia shall cause the flow of water in the buildings under their charge to be shut off from five o'clock post meridian to eight o'clock ante meridian: *Provided*, That the water in said public buildings is not necessarily in use for public business. *Act of March 3, 1883 (27 Stat. L., 615).*

Diversion of water prohibited.
Mar. 3, 1893, v. 27, p. 544.

1005. No portion of the water conveyed or to be conveyed through or by means of the Washington Aqueduct, or any appurtenance thereof, shall be diverted to the supply or use of any building, premises, or establishment located outside of the existing limits of the District of Columbia. *Act of March 3, 1893 (27 Stat. L., 544).*

Lands about reservoir.
Rock Creek bridge.
Mar. 3, 1875, v. 18, p. 393

1006. The lands belonging to the United States and lying around the receiving-reservoir shall hereafter be controlled in connection with the Washington Aqueduct, and shall be under the charge and control of the officer in charge of said aqueduct. *Act of March 3, 1875 (18 Stat. L., 393).*

Unauthorized opening of pipes; penalty.
Mar. 3, 1859, c. 84, s. 5, v. 11, p. 436.
Sec. 1803, R.S.

1007. No person, unless by consent of the Chief of Engineers in charge of the public buildings and works, shall tap or open the mains or pipes laid or hereafter to be laid by the United States, under a penalty of not less than fifty nor more than five hundred dollars.

Willful, etc., breaking, etc., of pipes; penalty.
Mar. 3, 1859, c. 84, s. 5, v. 11, p. 436.
Sec. 1804, R.S.

1008. Every person who maliciously breaks, injures, defaces, or destroys any main or pipe, bend, branch, valve, hydrant, service pipe, or any other fixture used for the distribution of water throughout the streets and avenues, or for its introduction into the houses, tenements, or buildings of Washington and Georgetown, shall be punishable by imprisonment in the county jail for not more than two years.

Maliciously making water impure.
Mar. 3, 1859, c. 84, s. 7, v. 11, p. 437.
Sec. 1806, R.S.

1009. Every person who maliciously commits any act by reason of which the supply of water, or any part thereof, to the cities of Washington and Georgetown becomes impure, filthy, or unfit for use, shall be fined not less than five hundred nor more than one thousand dollars, or imprisoned at hard labor in the District of Columbia not more than three years nor less than one year.

Pipes for use of public buildings.
Mar. 3, 1859, c. 84, s. 6, v. 11, p. 436.
Sec. 1805, R.S.

1010. No greater number of main pipes of the Washington Aqueduct shall be laid at the expense of the United States than are sufficient to furnish the public buildings, offices, and grounds with the necessary supply of water. The cost of any main pipe, for the supply of water to the inhabitants of Washington and Georgetown, must be paid by the District of Columbia in the manner provided by law.

ENGINEER COMMISSIONER OF THE DISTRICT OF COLUMBIA.

ASSISTANTS TO ENGINEER COMMISSIONER.

Par.
1011. The District Commissioners.
1012. The same; appointment.
1013. Salary.
1014. Compensation of Engineer Commissioner.
1015. Detail; rank.
Par.
1016. Assistants to Engineer Commissioner.
1017. Estimates.
1018. Powers of Commissioners.
1019. Control of wharf property.

Commissioners of the District of Columbia. Engineer Commissioner.
June 11, 1878, s. 2, v. 20, p. 103.

1011. Within twenty days after the approval of this act the President of the United States, by and with the advice and consent of the Senate, is hereby authorized to appoint two persons, who, with an officer of the Corps of Engineers of the United States Army, whose lineal rank shall be above that of captain, shall be Commissioners of the District of Columbia, and who, from and after July first, eighteen hundred and seventy-eight, shall exercise all the powers and authority now vested in the Commissioners of said District, except as are hereinafter limited or provided, and shall be subject to all restrictions and limitations and duties which are now imposed upon said Commissioners. The Commissioner who shall be an officer detailed, from time to time, from the Corps of Engineers, by the President, for this duty, shall not be required to perform any other, nor shall he receive any other compensation than his regular pay and allowances as an officer of the Army.[1] *Sec. 2, act of June 11, 1878 (20 Stat. L., 103).*

Civil Commissioners; appointment. *Ibid.*

1012. The two persons appointed from civil life shall, at the time of their appointment, be citizens of the United States, and shall have been actual residents of the District of Columbia for three years next before their appointment, and have, during that period, claimed residence nowhere else, and one of said three Commissioners shall be chosen president of the Board of Commissioners at their first meeting, and annually and whenever a vacancy shall occur thereafter; and said Commissioners shall each of them, before entering upon the discharge of his duties, take an oath or affirmation to support the Constitution of the United States, and to faithfully discharge the duties imposed upon him by law. *Ibid.*

Salary. *Ibid.*

1013. Said Commissioners appointed from civil life shall each receive for his services a compensation at the rate of five thousand dollars per annum, and shall, before entering upon the duties of the office, each give bond in the sum of fifty thousand dollars, with surety as is required by existing law. The official term of said Commissioners appointed from civil life shall be three years, and until their successors are appointed and qualified; but the first appointment shall be one Commissioner for one year and one for two years, and at the expiration of their respective terms their successors shall be appointed for three years. Neither of said Commissioners, nor any officer whatsoever of the District of Columbia, shall be accepted as surety upon any bond required to be given to the District of Columbia; nor shall any contractor be accepted as surety for any officer or other contractor in said District. *Ibid.*

Compensation of Engineer Commissioner. Mar. 3, 1881, v. 21, p. 460.

1014. Hereafter the Engineer Commissioner shall be entitled to receive such compensation, in addition to his army pay and allowances, as will make his compensation equal to five thousand dollars per annum, and a sum sufficient to pay said additional compensation is hereby appropriated. *Act of March 3, 1881 (21 Stat. L., 460).*

---

[1] Repealed as to the salary of the Engineer Commissioner by the act of March 3, 1881, par. 1014, *post*, which fixes his compensation at five thousand dollars per annum. The act of June 11, 1878, repealed the requirement of the act of June 20, 1874 (18 Stat. L., 117), which authorized the detail of an officer of the Corps of Engineers to act as engineer of the District of Columbia.

May be appointed from captains. J. R. No. 7, Dec. 24, 1890, v. 26, p. 1113.

1015. Hereafter such Engineer Commissioner may, in the discretion of the President of the United States, be detailed from among the captains or officers of higher grade having served at least fifteen years in the Corps of Engineers of the Army of the United States. *Joint resolution No. 7, December 24, 1890 (26 Stat. L., 1113).*

Three assistants authorized. Aug. 7, 1894, v. 28, p. 246.

1016. The President of the United States may detail from the Engineer Corps of the Army not more than three officers, juniors to the engineer officer belonging to the Board of Commissioners of said District, to act as assistants to said Engineer Commissioner in the discharge of the special duties imposed upon him by the provisions of this act.[1] *Act of August 7, 1894 (28 Stat. L., 246).*

Estimates. June 11, 1878, v. 20, p. 104.

1017. The said Commissioners shall submit to the Secretary of the Treasury for the fiscal year ending June thirtieth, eighteen hundred and seventy-nine, and annually thereafter, for his examination and approval, a statement showing in detail the work proposed to be undertaken by them during the fiscal year next ensuing, and the estimated cost thereof; also the cost of constructing, repairing, and maintaining all bridges authorized by law across the Potomac River within the District of Columbia, and also all other streams in said District; the cost of maintaining all public institutions of charity, reformatories, and prisons belonging to or controlled wholly or in part by the District of Columbia, and which are now by law supported wholly or in part by the United States or District of Columbia; and also the expenses of the Washington Aqueduct and its appurtenances; and also an itemized statement and estimate of the amount necessary to defray the expenses of the government of the District of Columbia for the next fiscal year: *Provided*, That nothing herein contained shall be construed as transferring from the United States authorities any of the public works within the District of Columbia now in the control or supervision of said authorities. *Act of June 11, 1878 (20 Stat. L., 104).*

Powers of District Commissioners. Limitation. June 10, 1879, v. 21, p. 9.

1018. The Commissioners of the District of Columbia shall have all the powers and be subject to all the duties and limitations provided in chapter eight of the Revised Statutes of the United States relating to the District of

---

[1] This statute replaces the provisions contained in section 5, act of June 11, 1878 (20 Stat. L., 107), which authorized the detail of two officers of engineers, junior in rank to the Engineer Commissioner, as assistants to that officer.

Columbia, excepting such powers and duties as belong to the Chief of Engineers:[1] *Provided*, That water-main taxes and water rents shall be uniform in said District. *Act of June 10, 1879 (21 Stat. L., 9).*

Control of wharf property, etc.

March 3, 1899, v. 30, p. 1377.

1019. With the exceptions hereinafter provided, the Commissioners of the District of Columbia shall have the exclusive charge and control of all wharf property belonging to the United States or to the District of Columbia within said District, including all the wharves, piers, bulkheads, and structures thereon and waters adjacent thereto within the pier lines, and all slips, basins, docks, water fronts, land under water, and structures thereon, and the appurtenances, easements, uses, reversions, and rights belonging thereto, which are now owned or possessed by the United States or the District of Columbia, or to which they or either of them is or may become entitled, or which they or either of them may acquire under the provisions hereof or otherwise; and said Commissioners of the District of Columbia shall have exclusive charge and control of the repairing, building, rebuilding, maintaining, altering, strengthening, leasing, and protecting said property and every part thereof, and all the cleaning, dredging, and deepening necessary in and about the same within the pier lines. Said Commissioners are also hereby authorized and empowered to make all needful rules and regulations for the government and control of all wharves, piers, bulkheads, and structures thereon, and waters adjacent thereto within the pier lines, and all the basins, slips, and docks, with the land under water, in said District not owned by the United States or the District of Columbia: *Provided*, That the following-described property shall be placed under the immediate jurisdiction and control of the Chief of Engineers of the United States: The banks of the Potomac River from the north line of the Arsenal Grounds to the southern curb line of N street south; also five hundred linear feet of shore line in the Flushing Reservoir at the foot of Seventeenth street west, and west from the western curb of said street, including a levee one hundred feet wide.[2] *Act of March 3, 1899 (30 Stat. L., 1377).*

---

[1] For powers and duties of the Commissioners of the District of Columbia in respect to the Washington Aqueduct, see paragraph 1018, *ante*. See also the act of June 20, 1874 (18 Stat. L., 74), creating the District Commission.

[2] For authority to make regulations in respect to the wharf property and other open spaces in the District of Columbia vested in the District Commissioners and the Chief of Engineers see par. 982, *ante*.

THE LIGHT-HOUSE BOARD.

Par.
1021. Organization.
1022. Detail of engineer officers.
1023. Duties.
1024. Contracts and purchases.
1025. The same; proposals.
Par.
1026. Inspectors.
1027. Restriction on compensation.
1028. Members, etc., not to be interested in purchases.

The Light-House Board.
Aug. 31, 1852, c. 112, s. 8, v. 10, p. 119.
Sec. 4653, R.S.

1021. The President shall appoint two officers of the Navy, of high rank, two officers of the Corps of Engineers of the Army, and two civilians of high scientific attainments, whose services may be at the disposal of the President, together with an officer of the Navy and an officer of engineers of the Army, as secretaries, who shall constitute the Light-House Board.

Superintendents of construction, etc., of light-houses.
Mar. 3, 1831, c. 37, s. 9, v. 9, p. 629.
Sec. 4664, R.S.

1022. The President shall cause to be detailed from the Engineer Corps of the Army, from time to time, such officers as may be necessary to superintend the construction and renovation of light-houses.

Contracts must be founded on official plans and on a vote of the board.
Aug. 31, 1852, c. 112, s. 14, v. 10, p. 120.

1023. The Light-House Board shall cause to be prepared by the engineer secretary of the board, or by such officer of engineers of the Army as may be detailed for that service, all plans, drawings, specifications, and estimates of cost, of all illuminating and other apparatus, and of construction and repair of towers, buildings, &c., connected with the Light-House Establishment, and no bid or contract shall be accepted or entered into except upon the decision of the board at a regular or special meeting and through their properly authorized officers.

Regulation of contracts for materials, etc.
Ibid., s. 14.

1024. All materials for the construction and repair of light-houses, light vessels, beacons, buoys, and so forth, shall be procured by public contracts, under such regulations as the board may from time to time adopt, subject to the approval of the Secretary of the Treasury, and all works of construction, renovation, and repair shall be made by the orders of the board, under the immediate superintendence of their engineer secretary, or of such engineer of the Army as may be detailed for that service.

Contracts for erection must be upon advertisement for proposals.
Mar. 2, 1867, c. 149, s. 1, v. 14, p. 425.

1025. No contract for the erection of any light-house shall be made except after public advertisement for proposals in such form and manner as to secure general notice thereof, and the same shall only be made with the lowest bidder therefor, upon security deemed sufficient in the judgment of the Secretary of the Treasury.[1]

---

[1] For statutory requirements in respect to the acquisition of jurisdiction over lands proposed to be acquired for light-house purposes, see sections 4661 and 4662 of the Revised Statutes.

1026. An officer of the Army or Navy shall be assigned to each district as a light-house inspector, subject to the orders of the Light-House Board; and shall receive for such service the same pay and emoluments that he would be entitled to by law for the performance of duty in the regular line of his profession, and no other, except the legal allowance per mile when traveling under orders connected with his duties.

Light-house inspectors.
Aug. 31, 1852, s. 12, v. 10, p. 120.
Sec. 4671, R. S.

1027. No additional salary shall be allowed to any civil, military, or naval officer on account of his being employed on the Light-House Board, or being in any manner attached to the Light-House Service.

Restriction upon compensation of officers, etc.
Aug. 31, 1852, c. 112, s. 17, v. 10, p. 120.
Sec. 4679, R. S.

1028. No member of the Light-House Board, inspector, light-keeper, or other person in any manner connected with the Light-House Service, shall be interested, either directly or indirectly, in any contract for labor, materials, or supplies for the Light-House Service, or in any patent, plan, or mode of construction or illumination, or in any article of supply for the Light-House Service.[1]

Officers, etc., not to be interested in contracts.
Aug. 31, 1852, c. 112, s. 17, v. 10, p. 120.
Sec. 4680, R. S.

THE MISSISSIPPI RIVER COMMISSION.

Par.
1029. Establishment.
1030. Composition.
1031. Location of headquarters.
1032. Duties; surveys.
1033. The same; plans, estimates.
1034. The same; works.
1035. Engineer secretary.
1036. Annual report.
Par.
1037. Material for improvements.
1038. Water gauges.
1039. Piers and cribs.
1040. South Pass; surveys.
1041. The same; regulations.
1042. The same; definition.
1043. Snag boats on Upper Mississippi.

1029. A commission is hereby created, to be called "The Mississippi River Commission," to consist of seven members. *Act of June 28, 1879 (21 Stat. L., 37).*

Mississippi River Commission.
June 28, 1879, v. 21, p. 37.

1030. The President of the United States shall, by and with the advice and consent of the Senate, appoint seven commissioners, three of whom shall be selected from the Engineer Corps of the Army, one from the Coast and Geodetic Survey, and three from civil life, two of whom shall be civil engineers. And any vacancy which may occur in the commission shall in like manner be filled by the President of the United States; and he shall designate one of the commissioners appointed from the Engineer Corps of the Army to be president of the commission.

Composition.
Sec. 2, *ibid.*

---

[1] For statutes defining the jurisdiction and functions of the Light-House Board, see sections 4653–4680 of the Revised Statutes, and the act of June 23, 1874 (18 Stat. L., 221).

The commissioners appointed from the Engineer Corps of the Army and the Coast and Geodetic Survey shall receive no other pay or compensation than is now allowed them by law, and the other three commissioners shall receive as pay and compensation for their services each the sum of three thousand dollars per annum; and the commissioners appointed under this act shall remain in office subject to removal by the President of the United States. *Sec. 2, ibid.*

Headquarters and general offices, location.
Feb, 18, 1901, v. 31, p. 792.

1031. The headquarters and general offices of said commission shall be located at some city or town on the Mississippi River, to be designated by the Secretary of War, and the meetings of the commission, except such as are held on Government boats during the time of the semiannual inspection trips of the commission, shall be held at said headquarters and general offices, the times of said meetings to be fixed by the president of the commission, who shall cause due notice of such meetings to be given members of the commission and the public. *Act of February 18, 1901 (31 Stat. L., 792).*

To direct surveys.
Detail of assistants.
Sec. 3, *ibid.*

1032. It shall be the duty of said commission to direct and complete such surveys of said river, between the Head of the Passes near its mouth to its head waters, as may be in progress, and to make such additional surveys, examinations, and investigations, topographical, hydrographical, and hydrometrical, of said river, and its tributaries, as may be deemed necessary by said commission to carry out the objects of this act. And to enable said commission to complete such surveys, examinations, and investigations, the Secretary of War shall, when requested by said commission, detail from the Engineer Corps of the Army such officers and men as may be necessary, and shall place in the charge and for the use of said commission such vessel or vessels and such machinery and instruments as may be under his control and may be deemed necessary. And the Secretary of the Treasury shall, when requested by said commission, in like manner detail from the Coast and Geodetic Survey such officers and men as may be necessary, and shall place in the charge and for the use of said commission such vessel or vessels and such machinery and instruments as may be under his control and may be deemed necessary. And the said commission may, with the approval of the Secretary of War, employ such additional force and assistants, and provide, by purchase or otherwise, such vessels or boats and such instruments and means as may be deemed necessary. *Sec. 3, act of June 28, 1879 (21 Stat. L., 37).*

Duties. Sec. 4, *ibid.*

1033. It shall be the duty of said commission to take into consideration and mature such plan or plans and estimates as will correct, permanently locate, and deepen the channel and protect the banks of the Mississippi River; improve and give safety and ease to the navigation thereof; prevent destructive floods; promote and facilitate commerce, trade, and the postal service; and when so prepared and matured, to submit to the Secretary of War a full and detailed report of their proceedings and actions, and of such plans, with estimates of the cost thereof, for the purposes aforesaid, to be by him transmitted to Congress: *Provided*, That the commission shall report in full upon the practicability, feasibility, and probable cost of the various plans known as the jetty system, the levee system, and the outlet system, as well as upon such others as they may deem necessary.[1] *Sec. 4, ibid.*

Report.

---

[1] The duties, under the law, of the Missouri River Commission, composed partly of civilians, relate exclusively to certain work quite other than the establishing of harbor lines. It is therefore not, as a body, subject to the directions of the Secretary of War in the matter of establishing harbor lines, nor are the civilian members subject individually to his orders. Thus, while they may consent to establish such lines, it is preferable for the Secretary to cause such work to be done through engineer officers of the Army. Dig. Opin. J. A. G., par. 2272.

Held, that the Mississippi River Commission derived no authority, from the statutes relating to its functions, to make allotments of the moneys appropriated by Congress for the improvements proposed. Its province is to indicate to Congress what improvements are needed and how much should be appropriated therefor. It has no authority to disburse money appropriated. An allotment made by it is to be treated by the Secretary of War as a recommendation only. The Secretary may adopt the recommendation, but in the disbursement should not omit any of the works specially designated by Congress in the appropriation act. Ibid., par. 2270.

Held, that the maps prepared by the Mississippi Commission, under appropriations by Congress, may legally be disposed of at the discretion of the commission, it being evidently intended by Congress that the information therein contained should be made public and circulated for the public use and benefit. Ibid., par. 2269.

Held (January, 1891), that the allowances for the traveling expenses of the civilian members of the Mississippi and Missouri River commissions were not regulated by any order of the War Department regulating the allowances of civil employees of the military establishment, but were such as are fixed by statute. They are not thus necessarily $4 per diem, since the statute law provides for the reimbursement of their actual necessary outlay, which may be more or less than this allowance. Ibid., par. 2271.

The salaries and traveling expenses of the members of the Mississippi River Commission who are appointed from civil life (Congress having failed to make a specific appropriation therefor) can not lawfully be defrayed out of the fund for the Mississippi River improvement. The application of such fund to that object would be inconsistent with section 3678, Revised Statutes. XVIII Opin. Att. Gen. 463.

The traveling expenses of the three civilian members of the Mississippi River Commission and of the member appointed from the Coast and Geodetic Survey include their actual traveling expenses only for all authorized travel on public duty. 3 Dig. Compt. Dec., 219.

In making appropriations for the improvement of the Mississippi River, Congress evidently contemplates that there shall be provided at public expense, on the vessel transporting the members of the Mississippi River Commission on their trips of

To construct works.
Sec. 5, *ibid.*

1034. The said commission may, prior to the completion of all the surveys and examinations contemplated by this act, prepare and submit to the Secretary of War plans, specifications, and estimates of cost for such immediate works as, in the judgment of said commission, may constitute a part of the general system of works herein contemplated, to be by him transmitted to Congress. *Sec. 5, ibid.*

Secretary.
Sec. 6, *ibid.*

1035. The Secretary of War may detail from the Engineer Corps of the Army of the United States an officer to act as secretary of said commission.[1] *Sec. 6, ibid.*

Annual Report.
Aug. 11, 1888, s. 8, v. 25, p. 400.

1036. The Secretary of War shall cause the manuscript of the Annual Report of the Chief of Engineers and subordinate engineers, relating to the improvement of rivers and harbors, and the reports of the Mississippi and Missouri River commissions to be placed in the hands of the Public Printer on or before the fifteenth day of October in each year. * * * *Sec. 8, act of August 11, 1888 (25 Stat. L., 400).*

MISCELLANEOUS PROVISIONS RESPECTING THE MISSISSIPPI RIVER.

Material for improvements authorized, how obtained.

1037. Whenever in the prosecution and maintenance of the improvement of the Mississippi River and other rivers,

---

inspection, such table comforts only as are generally provided by steamboat companies for the traveling public. Ibid.

When an appropriation is available for the payment of accounts for "salaries and traveling expenses of the Mississippi River Commission, and for salaries and traveling expenses of assistant engineers, and for office expenses and contingencies," the following expenses are properly payable therefrom under existing laws: (1) The salaries of the three members of the commission appointed from civil life, at the rate of $3,000 each per annum, and of those only, the salaries of the other members being otherwise provided for; (2) the salaries of all civilian assistant engineers employed under the commission, but not that of the secretary of the commission or of any other assistant engineer detailed from the Corps of Engineers; (3) the actual traveling expenses only, for all authorized travel on public duty, of the three civilian members of the commission and of the member appointed from the Coast and Geodetic Survey; (4) the actual traveling expenses only, for all authorized travel on public duty, of all civilian assistant engineers employed under the commission; (5) the mileage of the three members of the commission appointed from the Engineer Corps of the Army, at the rate of 8 cents per mile, only under circumstances when mileage is authorized by law, for all travel required of them by the commission pertinent to the objects for which it was constituted, travel so required being travel under orders within the meaning of section 2 of the act of July 24, 1876, chapter 226; (6) the mileage of the secretary of the commission and of any other assistant engineer detailed from the Corps of Engineers and employed under the commission, at the rate of 8 cents per mile, only when mileage is authorized by law, for all travel required of them by the commission pertinent to the objects for which it was constituted; (7) the office expenses of the commission; (8) the contingent expenses of the commission. Ibid., p. 217.

The salaries accruing to the civilian members of the Mississippi River Commission, during a period when the regular appropriation for their payment is not available, can not legally be paid from funds appropriated for the improvement of the Mississippi River, unless provision is specifically made therefor in the act appropriating such funds. Ibid., p. 218. See, also, XVIII Opin. Att. Gen., p. 463.

[1] Vouchers in support of payments of mileage to officers of the Army belonging to or employed by the Mississippi River Commission should be accompanied by orders for the journeys performed or by other evidence that they were required by the commission and were pertinent to the objects for which it was constituted. Ibid., p. 217.

Sec. 6, July 5, 1884, v. 23, p. 148.

harbors, and public works for which appropriations are herein made it becomes necessary or proper, in the judgment of the Secretary of War, to take possession of material found on bars and islands within the river banks, or other material lying adjacent or near to the line of any of said works and needful for their prosecution or maintenance, the officers in charge of said works may, when they can not agree as to the price with the owners thereof, in the name of the United States take possession of and use the same after first having paid or secured to be paid the value thereof, which may have been ascertained in the mode provided by the laws of the State wherein such property or material lies: *Provided*, *however*, That when the owner of such property or material shall fix a price for the same which in the opinion of said officer in charge, shall be reasonable, he may take the same at such price without further delay. The Department of Justice shall represent the interests of the United States in the legal proceedings under this act. *Sec. 6, act of July 5, 1884 (23 Stat. L., 148).*

Water gauges on the Mississippi River and tributaries.

Feb. 21, 1871, Res. 40, v. 16, p. 598.

Sec. 5252, R.S.

1038. The Secretary of War is hereby authorized and directed to have water gauges established, and daily observations made of the rise and fall of the Lower Mississippi River and its chief tributaries, at or in the vicinity of Saint Louis, Cairo, Memphis, Helena, Napoleon, Providence, Vicksburgh, Red River Landing, Baton Rouge, and Carrollton, on the Mississippi, between the mouth of the Missouri and the Gulf of Mexico; and at or in the vicinity of Fort Leavenworth, on the Missouri; Rock Island, on the Upper Mississippi; Louisville, on the Ohio; Florence, on the Tennessee; Jacksonport, on the White River; Little Rock, on the Arkansas, and Alexandria, on the Red River, and at such other places as the Secretary of War may deem advisable. The expenditure for the same shall be made from the appropriation for the improvement of rivers and harbors, but the annual cost of the observations shall not exceed the sum of five thousand dollars.

Piers and cribs on the Mississippi River.

Mar. 3, 1873, c. 278, v. 17, p. 606; May 1, 1882, v. 22, p. 52.

Sec. 5254, R.S.

1039. The owners of sawmills on the Mississippi River and the Saint Croix River in the States of Wisconsin and Minnesota are authorized and empowered, under the direction of the Secretary of War, to construct piers or cribs in front of their mill property on the banks of the river, for the protection of their mills and rafts against damage by floods and ice: *Provided*, *however*, That the piers or cribs so constructed shall not interfere with or obstruct the navigation of the river. And in case any pier or crib constructed under authority of this section shall at any time and for any cause be found to obstruct the navigation of the river the Government expressly reserves the right to remove or direct the removal of it at the cost and expense of the owners thereof.

Surveys at South Pass, Mississippi River. Sec. 4, Aug. 11, 1888, v. 25, p. 424. Appropriation made permanent.

1040. For the purpose of securing the uninterrupted examinations and surveys at the South Pass of the Mississippi River, as provided for in the act of March third, eighteen hundred and seventy-five,[1] the Secretary of War, upon the application of the Chief of Engineers, is hereby authorized to draw his warrant or requisition from time to time upon the Secretary of the Treasury for such sums as may be necessary to do such work, not to exceed in the aggregate for each year the amount appropriated in this act for such purpose: *Provided, however,* That an itemized statement of said expenditures shall accompany the Annual Report of the Chief of Engineers.[2] *Sec. 4, act of August 11, 1888 (25 Stat. L., 424).*

Regulations for navigation of South Pass, Mississippi River. Sec. 5, Aug. 11, 1888, v. 25, p. 424. Sec. 3, Sept. 19, 1890, v. 26, p. 452.

1041. The Secretary of War be, and is hereby, authorized to make such rules and regulations for the navigation of the South Pass of the Mississippi River as to him shall seem necessary or expedient for the purpose of preventing any obstruction to the channel through said South Pass and any injury to the works therein constructed. *Sec. 5, act of August 11, 1888 (25 Stat. L., 424).*

South Pass. Penalty for violation. *Ibid.*

1042. The term "South Pass," as herein employed, shall be construed as embracing the entire extent of channel between the upper ends of the works at the head of the Pass and the outer or sea end of the jetties at the entrance from the Gulf of Mexico; and any willful violation of any rule or regulation made by the Secretary of War in pursuance of this act shall be deemed a misdemeanor, for which the owner or owners, agent or agents, master or pilot of the vessel so offending shall be separately or collectively responsible, and on conviction thereof shall be punished by a fine not exceeding two hundred and fifty dollars or by imprisonment not exceeding three months, at the discretion of the court.[3] *Ibid.*

---

[1] 18 Stat. L., 464.

[2] Statutory provision for the termination of the agreement with the late James B. Eads for the maintenance of a channel through the South Pass was made in section 3 of the act of June 6, 1900 (31 Stat. L., 584).

[3] See also section 3, act of September 19, 1890 (26 Stat. L., 452).

Snag boats, Upper Mississippi River.
Sec. 7, Aug. 11, 1888, v. 25, p. 424.
Appropriation for, made permanent.

1043. For the purpose of securing the uninterrupted work of operating snag boats on the Upper Mississippi River, and of removing snags, wrecks, and other obstructions in the Mississippi River, the Secretary of War, upon the application of the Chief of Engineers, is hereby authorized to draw his warrant or requisition from time to time upon the Secretary of the Treasury for such sums as may be necessary to do such work, not to exceed in the aggregate for each year the amounts appropriated in this act for such purposes: *Provided, however*, That an itemized statement of said expenses shall accompany the Annual Report of the Chief of Engineers. *Sec. 4, act of August 11, 1888 (25 Stat. L., 424).*

THE MISSOURI RIVER COMMISSION.

Par.
1044. Establishment.
1045. Composition.
1046. Duties.
Par.
1047. Supervision of expenditures.
1048. Annual report.

Creation.

1044. A commission to be called the Missouri River Commission is hereby created, to consist of five members.

Composition.
July 5, 1884, v. 23, p. 144.
Ibid.

1045. The President shall nominate and, by and with the advice and consent of the Senate, appoint five commissioners, three of whom shall be selected from the Corps of Engineers of the Army and two from civil life, one of whom at least shall be a civil engineer; and he shall in like manner fill any vacancy in said commission; and he shall designate one of the commissioners appointed from the Corps of Engineers to be president of the commission. The commissioners appointed from the Corps of Engineers shall receive no other pay or compensation than is allowed them by law, and the other two commissioners shall each receive for their services pay at the rate of two thousand five hundred dollars per annum, out of any money appropriated for the Missouri River; and all said commissioners shall remain in office subject to removal by the President of the United States.[1] *Ibid.*

---

[1] The nomination to the Senate, as a member of the Missouri River Commission, of Clarence L. Chaffee, vice Richard S. Berlin, the confirmation of Mr. Chaffee by the Senate, "agreeably to the nomination," the signing of his commission, his taking the oath of office, appearance at a meeting of the commission and entering upon the duties of the office on July 6, 1897, constitute notice to Mr. Berlin of his removal on that date. 4 Compt. Dec., 466. Upon notice to the incumbent of an office by a person who has been appointed thereto that he is ready to assume the duties of the office, the removal of the incumbent is complete, and the appointee becomes invested with the office and entitled to the compensation thereof. Ibid., 601.

Duties. *Ibid.*

1046. It shall be the duty of said commission to superintend and direct such improvement of said river and to carry into execution such plans for the improvement of the navigation of said river from its mouth to its head waters as may now be devised and in progress, and to continue and complete such surveys as may now be in progress, and to make such additional surveys, examinations, and investigations, topographical, hydrographical, and hydrometrical, and to consider, devise, and mature such additional plan or plans, and all such estimates as may be deemed necessary and best, to obtain and maintain a channel and depth of water in said river sufficient for the purposes of commerce and navigation and to accomplish the objects of this act; and to enable the commission to perform the duties assigned them the Secretary of War is hereby authorized and directed to transfer to and place under the control and superintendence of said commission all such vessels, barges, machinery, and instruments, and such plant as may now be provided, devised, or in use on said river, from appropriations heretofore made for said river, or other sources, and when thereto requested by said commission to detail from the Corps of Engineers such officers and men as may be necessary, and to place in the charge of said commission any such vessels, machinery, and instruments under his control as may be deemed necessary. And said commission may, with the approval of the Secretary of War, employ such additional force and assistants, and provide, by purchase or otherwise, such additional vessels, boats, machinery, instruments, and means as may be deemed necessary; to be paid for by appropriations made or to be made for said river. *Ibid.*

Supervision of expenditure of appropriations. *Ibid.*

1047. The said commission shall, under the direction and with the approval of the Secretary of War, superintend, control, and expend for the purposes of this act all appropriations or unexpended balances heretofore made for the improvement of said river, and which may hereafter be made for said river, or so much thereof as may be necessary, and shall prepare and submit, through the Chief of the Engineer Corps, to the Secretary of War, to be by him transmitted to Congress at the beginning of the regular session in December of each year, a full and detailed report of all their proceedings and actions, and of all such plans and systems of work as may now be devised and in progress and carried out by them, and of all such additional plans and systems of works as may be devised and matured by them, with full and detailed estimates of the cost thereof, and statements of all expenditures made by them; and the Secretary of War may detail from the Corps of Engineers or other corps of the Army an officer to act as secretary of the commission, to aid them in their work; and all money hereby or hereafter appropriated for the improvement of said Missouri River shall be expended under the direction of the Secretary of War in accordance with the plans, specifications, and recommendations of said commission when such plans, specifications, and recommendations shall have been approved by Congress.[1] *Ibid.*

Secretary.

Annual report. August 11, 1888, s. 8, v. 25, p. 400.

1048. The Secretary of War shall cause the manuscript of the * * * Missouri River Commission to be placed in the hands of the Public Printer on or before the fifteenth day of October in each year. *Sec. 8, act of August 11, 1888* (*25 Stat. L., 400*).

THE CALIFORNIA DÉBRIS COMMISSION.

Par.
1049. Establishment.
1050. Composition; compensation.
1051. Jurisdiction.
1052. Duties.
1053. Surveys; inspections.
1054. Condition of navigable channels.
1055. Annual report.
1056. Hydraulic mining defined.
1057. The same; petition to engage in.
1058. Contents of petition.
1059. The same; joint petition.
1060. The same; notice; publication; hearing.
1061. Decisions of commission to be made within thirty days.
1062. Plans of works submitted to commission.
1063. Opening of works; conditions.
1064. Allotment of expenses of construction.

Par.
1065. Limits of débris washed away.
1066. Modification of orders.
1067. Forfeiture of privilege.
1068. Inspection of mines.
1069. Use of public lands, etc.
1070. Injury to works; penalty.
1071. Violations of statute; penalty.
1072. Tax on gross proceeds.
1073. Débris fund created.
1074. Consultation with State commission.
1075. Expenditure of débris fund.
1076. Impounding dams, etc.
1077. Treasurer to receive funds from State of California.
1078. State appropriations.
1079. The same; contractors.
1080. The same; hired labor.
1081. Travel expenses of commissioners.

California Débris Commission. Mar. 1, 1892, v. 27, p. 507.

1049. A commission is hereby created, to be known as the California Débris Commission, consisting of three members. The President of the United States shall, by and with the advice and consent of the Senate, appoint the commission from officers of the Corps of Engineers, United States Army. Vacancies occurring therein shall be filled in like manner. It shall have the authority and exercise the powers hereinafter set forth, under the supervision of the Chief of Engineers and direction of the Secretary of War.[1] *Act of March 1, 1892 (27 Stat. L., 507).*

---

[1] The duties, under the law, of the Missouri River Commission, composed partly of civilians, relate exclusively to certain work quite other than the establishing of *harbor lines*. It is therefore not, as a body, subject to the directions of the Secretary of War in the matter of establishing harbor lines, nor are the civilian members subject individually to his orders. Thus, while they may consent to establish such lines, it is preferable for the Secretary to cause such work to be done through engineer officers of the Army. Dig. Opin. J. A. G., 684, par. 2272.

Organization; compensation.

1050. Said commission shall organize within thirty days after its appointment by the selection of such officers as may be required in the performance of its duties, the same to be selected from the members thereof. The members of said commission shall receive no greater compensation than is now allowed by law to each, respectively, as an officer of said Corps of Engineers. It shall also adopt rules and regulations, not inconsistent with law, to govern its deliberations and prescribe the method of procedure under the provisions of this act. *Sec. 2, ibid.*

Regulations. Sec. 2, *ibid.*

Jurisdiction.

1051. The jurisdiction of said commission, in so far as the same affects mining carried on by the hydraulic process, shall extend to all such mining in the territory drained by the Sacramento and San Joaquin river systems in the State of California. Hydraulic mining, as defined in section eight hereof, directly or indirectly injuring the navigability of said river systems, carried on in said territory other than as permitted under the provisions of this act is hereby prohibited and declared unlawful. *Sec. 3, ibid.*

Injurious hydraulic mining prohibited. Sec. 3, *ibid.*

Duty of commission. Plans. Sec. 4, *ibid.*

1052. It shall be the duty of said commission to mature and adopt such plan or plans, from examinations and surveys already made and from such additional examinations and surveys as it may deem necessary, as will improve the navigability of all the rivers comprising said systems, deepen their channels, and protect their banks. Such plan or plans shall be matured with a view of making the same effective as against the encroachment of and damage from débris resulting from mining operations, natural erosion, or other causes, with a view of restoring, as near as practicable and the necessities of commerce and navigation demand, the navigability of said rivers to the condition existing in eighteen hundred and sixty, and permitting mining by the hydraulic process, as the term is understood in said State, to be carried on, provided the same can be accomplished without injury to the navigability of said rivers or the lands adjacent thereto. *Sec. 4, ibid.*

---

[1] The act of June 14, 1880 (21 Stat. L., 196), required the Secretary of War to cause such surveys, etc., to be made as would enable a scheme to be devised to prevent further injury to the navigable waters of California, due to the deposit in the same of débris from the mines.

The members of the California Débris Commission do not hold civil office within the meaning of section 1222 of the Revised Statutes, nor does section 1224 of the Revised Statutes necessitate their withdrawal from the Engineer Corps. XX Opin. Att. Gen., 604.

Surveys of storage sites, for débris, reservoirs, etc. Sec. 5, *ibid.*

1053. It shall further examine, survey, and determine the utility and practicability, for the purposes hereinafter indicated, of storage sites in the tributaries of said rivers and in the respective branches of said tributaries, or in the plains, basins, sloughs, and tule and swamp lands adjacent to or along the course of said rivers, for the storage of débris or water or as settling reservoirs, with the object of using the same by either or all of these methods to aid in the improvement and protection of said navigable rivers by preventing deposits therein of débris resulting from mining operations, natural erosion, or other causes, or for affording relief thereto in flood time and providing sufficient water to maintain scouring force therein in the summer season; and in connection therewith to investigate such hydraulic and other mines as are now or may have been worked by methods intended to restrain the débris and material moved in operating such mines by impounding dams, settling reservoirs, or otherwise, and in general to make such study of and researches in the hydraulic mining industry as science, experience, and engineering skill may suggest as practicable and useful in devising a method or methods whereby such mining may be carried on as aforesaid. *Sec. 5, ibid.*

Inspection of hydraulic and other mines, etc.

Noting condition of navigable channels. Sec. 6, *ibid.*

1054. The said commission shall from time to time note the conditions of the navigable channels of said river systems, by cross-section surveys or otherwise, in order to ascertain the effect therein of such hydraulic mining operations as may be permitted by its orders and such as is caused by erosion, natural or otherwise. *Sec. 6, ibid.*

Annual report. Sec. 7, *ibid.*

1055. Said commission shall submit to the Chief of Engineers, for the information of the Secretary of War, on or before the fifteenth day of November of each year, a report of its labors and transactions, with plans for the construction, completion, and preservation of the public works outlined in this act, together with estimates of the cost thereof, stating what amounts can be profitably expended thereon each year. The Secretary of War shall thereupon submit same to Congress on or before the meeting thereof. *Sec. 7, ibid.*

"Hydraulic mining" and "mining by the hydraulic process" defined.
Sec. 8, *ibid.*

1056. For the purposes of this act "hydraulic mining" and "mining by the hydraulic process," are hereby declared to have the meaning and application given to said terms in said State. *Sec. 8, ibid.*

Hydraulic miners must file petition with commission.
Sec. 9, *ibid.*

1057. The individual proprietor or proprietors, or in case of a corporation its manager or agent appointed for that purpose, owning mining ground in the territory in the State of California mentioned in section three hereof, which it is desired to work by the hydraulic process, must file with said commission a verified petition, setting forth such facts as will comply with law and the rules prescribed by said commission. *Sec. 9, ibid.*

Joint petition by mining claim owners requiring a common dumping ground, etc.
Sec. 11, *ibid.*

Contents of petition.
Sec. 10, *ibid.*

1058. Said petition shall be accompanied by an instrument duly executed and acknowledged, as required by the law of the said State, whereby the owner or owners of such mine or mines surrender to the United States the right and privilege to regulate by law, as provided in this act, or any law that may hereafter be enacted, or by such rules and regulations as may be prescribed by virtue thereof, the manner and method in which the débris resulting from the working of said mine or mines shall be restrained, and what amount shall be produced therefrom; it being understood that the surrender aforesaid shall not be construed as in any way affecting the right of such owner or owners to operate said mine or mines by any other process or method now in use in said State: *Provided*, That they shall not interfere with the navigability of the aforesaid rivers. *Sec. 10, ibid.*

1059. The owners of several mining claims situated so as to require a common dumping ground or dam or other restraining works for the débris issuing therefrom in one or more sites may file a joint petition setting forth such facts in addition to the requirements of section nine hereof; and where the owner of a hydraulic mine or owners of several such mines have and use common dumping sites for impounding débris or as settling reservoirs, which sites are located below the mine of an applicant not entitled to use same, such fact shall also be stated in said petition. Thereupon the same proceedings shall be had as provided for herein. *Sec. 11, ibid.*

Notice of petition, etc., to be published.
Sec. 12, *ibid.*

1060. A notice, specifying briefly the contents of said petition and fixing a time previous to which all proofs are to be submitted, shall be published by said commission in some newspaper or newspapers of general circulation in the communities interested in the matter set forth therein. If published in a daily paper such publication shall continue for at least ten days; if in a weekly paper, in at least three issues of the same. Pending publication thereof said commission or a committee thereof shall examine the mine and premises described in such petition. On or before the time so fixed all parties interested, either as petitioners or contestants, whether miners or agriculturists, may file affidavits, plans, and maps in support of their respective claims. Further hearings, upon notice to all parties of record, may be granted by the commission when necessary. *Sec. 12, ibid.*

Examination of mine.

Affidavits, plans, etc., may be filed.

Hearings.

1061. In case a majority of the members of said commission, within thirty days after the time so fixed, concur in a decision in favor of the petitioner or petitioners, the said commission shall thereupon make an order directing the methods and specifying, in detail, the manner in which operations shall proceed in such mine or mines; what restraining or impounding works, if facilities therefor can be found, shall be built and maintained; how and of what material; where to be located; and, in general, set forth such further requirements and safeguards as will protect the public interests and prevent injury to the said navigable rivers and the lands adjacent thereto, with such further conditions and limitations as will observe all the provisions of this act in relation to the working thereof and the payment of taxes on the gross proceeds of the same: *Provided*, That all expense incurred in complying with said order shall be borne by the owner or owners of such mine or mines. *Sec. 13, ibid.*

Favorable decisions within thirty days. Sec. 13, *ibid.*

1062. Such petitioner or petitioners must, within a reasonable time, present plans and specifications of all works required to be built in pursuance of said order for examination, correction, and approval by said commission; and thereupon work may immediately commence thereon under the supervision of said commission or representative thereof attached thereto from said Corps of Engineers, who shall inspect same from time to time. Upon completion thereof, if found in every respect to meet the requirements of the said order and said approved plans and specifications, permission shall thereupon be granted to the owner or owners of such mine or mines to commence mining operations, subject to the conditions of said order and the provisions of this act. *Sec. 14, ibid.*

Plans, etc., to be submitted to commission. Sec. 14, *ibid.*

Commencement of works. Supervision.

Completion.

Permission to commence mining.

1063. No permission granted to a mine owner or owners under this act shall take effect, so far as regards the working of a mine, until all impounding dams or other restraining works, if any are prescribed by the order granting such

Conditions, etc., as to commencing operations. Sec. 15, *ibid.*

permission, have been completed, and until the impounding dams or other restraining works or settling reservoirs provided by said commission have reached such a stage as, in the opinion of said commission, it is safe to use the same: *Provided, however*, That if said commission shall be of the opinion that the restraining and other works already constructed at the mine or mines shall be sufficient to protect the navigable rivers of said systems and the work of said commission, then the owner or owners of such mine or mines may be permitted to commence operations.[1] *Sec. 15, ibid.*

Navigation, etc., sufficiently protected.

Allotment of expenses for constructing common dumps, etc. *Ante*, p. 508. Sec. 16, *ibid.*

1064. In case the joint petition referred to in section eleven hereof is granted, the commission shall fix the respective amounts to be paid by each owner of such mines toward providing and building necessary impounding dams or other restraining works. In the event of a petition being filed after the entry of such order, or in case the impounding dam or dams or other restraining works have already been constructed and accepted by said commission, the commission shall fix such amount as may be reasonable for the privilege of dumping therein, which amount shall be divided between the original owners of such impounding dams or other restraining works in proportion to the amount respectively paid by each party owning same. The expense of maintaining and protecting such joint dams or works shall be divided among mine owners using the same is such proportion as the commission shall determine. In all cases where it is practicable, restraining and impounding works are to be provided, constructed, and maintained by mine owners near or below the mine or mines before reaching the main tributaries of said navigable waters. *Sec. 16, ibid.*

Subsequent petitioners to pay for dumping privilege.

Apportionment of such payment to original owners.

Maintenance, etc.

Location.

Limit of débris washed away. Sec. 17, *ibid.*

1065. At no time shall any more débris be permitted to be washed away from any hydraulic mine or mines situated on the tributaries of said rivers and the respective branches of each, worked under the provisions of this act, than can be impounded within the restraining works erected. *Sec. 17, ibid.*

Modifications, etc., of orders. Sec. 18, *ibid.*

1066. The said commission may at any time, when the condition of the navigable rivers or when the capacities of all impounding and settling facilities erected by mine owners or such as may be provided by Government authority require same, modify the order granting the privilege to mine by the hydraulic mining process so as to reduce amount thereof to meet the capacities of the facilities then in use, or if actually required in order to protect the navigable rivers from damage, may revoke same until the further notice of the commission. *Sec. 18, ibid.*

---

[1] The act of March 1, 1893 (27 Stat. L., 507), requiring certain conditions precedent to be performed by persons desiring to engage in hydraulic mining in the territory comprised in the Sacramento and San Joaquin river systems, is to be construed as entirely prohibiting hydraulic mining in said territory until application has been made and permission given in accordance with the terms of the act. U. S. *v.* North Bloomfield Gravel Mining Co., 81 Fed. Rep., 243.

Forfeiture for violating conditions.
Sec. 19, *ibid.*

1067. An intentional violation on the part of a mine owner or owners, company or corporation, or the agents or employees of either, of the conditions of the order granted pursuant to section thirteen, or such modifications thereof as may have been made by said commission, shall work a forfeiture of the privileges thereby conferred, and upon notice being served by the order of said commission upon such owner or owners, company or corporation, or agent in charge, work shall immediately cease. Said commission shall take necessary steps to enforce its orders in case of the failure, neglect, or refusal of such owner or owners, company or corporation, or agents thereof, to comply therewith, or in the event of any person or persons, company or corporation working by said process in said territory contrary to law. *Sec. 19, ibid.*

Enforcement of orders, etc.

Visiting and inspection of mines.
Sec. 20, *ibid.*

1068. Said commission, or a committee therefrom, or officer of said corps assigned to duty under its orders, shall, whenever deemed necessary, visit said territory and all mines operating under the provisions of this act. A report of such examination shall be placed on file. *Sec. 20, ibid.*

Use of public lands and material.
Sec. 21, *ibid.*

1069. The said commission is hereby granted the right to use any of the public lands of the United States, or any rock, stone, timber, trees, brush, or material thereon or therein for any of the purposes of this act; and the Secretary of the Interior is hereby authorized and requested, after notice has been filed with the Commissioner of the General Land Office by said commission, setting forth what public lands are required by it under the authority of this section, that such land or lands shall be withdrawn from sale and entry under the laws of the United States. *Sec. 21, ibid.*

Willful injury to works a misdemeanor.
Sec. 22, *ibid.*

1070. Any person or persons who willfully or maliciously injure, damage, or destroy, or attempt to injure, damage, or destroy any dam or other work erected under the provisions of this act for restraining, impounding, or settling purposes, or for use in connection therewith, shall

Penalty.

be guilty of a misdemeanor, and upon conviction thereof shall be fined not to exceed the sum of five thousand dollars or be imprisoned not to exceed five years, or by both such fine and imprisonment in the discretion of the court. *Sec. 22, ibid.*

Violation of this act a misdemeanor. *Ibid.*

1071. And any person or persons, company or corporation, their agents or employees, who shall mine by the hydraulic process directly or indirectly injuring the navigable waters of the United States, in violation of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding five thousand dollars or by imprisonment not exceeding one year, or by both such fine and imprisonment in the discretion of the court: *Provided*, That this section shall take effect on the first day of May, eighteen hundred and ninety-three. *Ibid.*

Penalty.

When operative.

Tax on gross proceeds of hydraulic mines. Sec. 23, *ibid.*

1072. Upon the construction by the said commission of dams or other works for the detention of débris from hydraulic mines and the issuing of the order provided for by this act to any individual, company, or corporation to work any mine or mines by hydraulic process, the individual, company, or corporation operating thereunder working any mine or mines by hydraulic process, the débris from which flows into or is in whole or in part restrained by such dams or other works erected by said commission, shall pay a tax of three per centum on the gross proceeds of his, their, or its mine so worked; which tax of three per centum shall be ascertained and paid in accordance with regulations to be adopted by the Secretary of the Treasury, and the Treasurer of the United States is hereby authorized to receive the same. *Sec. 23, ibid.*

A "débris fund" created. Expenditures from same by the commission. *Ibid.*

1073. All sums of money paid into the Treasury under this section shall be set apart and credited to a fund to be known as the "Débris fund," and shall be expended by said commission under the supervision of the Chief of Engineers and direction of the Secretary of War, in addition to the appropriations made by law, in the construction and maintenance of such restraining works and settling reservoirs as may be proper and necessary: *Provided*, That said commission is hereby authorized to receive and pay into the Treasury from the owner or owners of mines worked by the hydraulic process, to whom permission may have been granted so to work under the provisions hereof, such money advances as may be offered to aid in the construction of such impounding dams or other restraining works, or settling reservoirs, or sites therefor, as may be deemed necessary by said commission to protect the navigable channels of said river systems, on condition that all moneys so advanced shall be refunded as the said tax is paid into the said débris fund: *And provided further*, That in no event shall the Government of the United States be held liable to refund same except as directed by this section. *Ibid.*

Commission may consult with State commission of engineers. Sec. 24, *ibid.*

1074. For the purpose of securing harmony of action and economy in expenditures in the work to be done by the United States and the State of California, respectively, the former in its plans for the improvement and protection of the navigable streams and to prevent the depositing of mining débris or other materials within the same, and the latter in its plans authorized by law for the reclamation, drainage, and protection of its lands, or relating to the working of hydraulic mines, the said commission is empowered to consult thereon with a commission of engineers of said State, if authorized by said State for said purpose, the result of such conference to be reported to the Chief of Engineers of the United States Army, and if by him approved shall be followed by said commission. *Sec. 24, ibid.*

Appropriations from débris fund to be expended in restraining works, etc., above head of navigation, etc. Sec. 25, *ibid.*

1075. Said commission, in order that such material as is now or may hereafter be lodged in the tributaries of the Sacramento and San Joaquin river systems, resulting from mining operations, natural erosion, or other causes, shall be prevented from injuring the said navigable rivers or such of the tributaries of either as may be navigable and the land adjacent thereto, is hereby directed and empowered, when appropriations are made therefor by law, or sufficient money is deposited for that purpose in said débris fund, to build at such points above the head of navigation in said rivers and on the main tributaries thereof, or branches of such tributaries, or at any place adjacent to the same which, in the judgment of said commission will effect said object (the same to be of such material as will insure safety and permanency), such restraining or impounding dams and settling reservoirs, with such canals, locks, or other works adapted and required to complete same. *Sec. 25, ibid.*

Recommendations adopted and made the basis of operations. *Ibid.*

1076. The recommendations contained in Executive Document Numbered Two hundred and sixty-seven, Fifty-first Congress, second session, and Executive Document Numbered Ninety-eight, Forty-seventh Congress, first session, Appropriations.

as far as they refer to impounding dams, or other restraining works, are hereby adopted, and the same are directed to be made the basis of operations. The sum of fifteen thousand dollars is hereby appropriated, from moneys in the Treasury not otherwise appropriated, to be immediately available, to defray the expenses of said commission. *Ibid.*

Treasurer of the United States to receive funds appropriated by the State of California.

June 3, 1896, v. 29, p. 232.

1077. The Treasurer of the United States is hereby authorized to receive from the State of California, through the débris commission of said State, or other officer thereunto duly authorized, any and all sums of money that have been, or may hereafter be, appropriated by said State for the purposes herein set forth. And said sums when so received are hereby appropriated for the purposes above named, to be expended in the manner above provided. *Act of June 3, 1896 (29 Stat. L., 232).*

Receipt and use of State appropriations.

1078. For the purpose of carrying out the following provision of the river and harbor act of eighteen hundred and ninety-six: "For the construction of restraining barriers for the protection of the Sacramento and Feather rivers in California, two hundred and fifty thousand dollars, such restraining barriers to be constructed under the direction of the Secretary of War in accordance with the recommendations of the California Débris Commission, pursuant to the provisions of and for the purposes set forth in section twenty-five of the act of the Congress of the United States entitled, 'An act to create the California Débris Commission and regulate hydraulic mining in the State of California,' approved March first, eighteen hundred and ninety-three: *Provided*, That the Treasurer of the United States be, and he is hereby, authorized to receive from the State of California, through the débris commission of said State, or other officer thereunto duly authorized, any and all sums of money that have been or may hereafter be appropriated by said State for the purposes herein set forth. And said sums when so received and hereby appropriated for the purposes above named, to be expended in the manner above provided," and for the further purpose of making available to the United States the appropriation, or any part thereof, made by the provisions of an act of the legislature of the State of California, approved March seventeenth, eighteen hundred and ninety-seven, entitled "An act to amend an act entitled 'An act to provide for the appointment, duties, and compensation of a débris commissioner, and to make appropriation to be expended under his directions in the discharge of his duties as such commissioner, approved March twenty-fourth, eighteen hundred and ninety-three,'" and of said amended act, the Secretary of War is hereby authorized, in the preparation for and construction of the proposed works authorized and appropriated for by the aforesaid provisions, to enter into an agreement that the contractor shall look solely to the State of California for one-half of such expense, to be paid out of said State appropriation, and the United States shall in no manner be liable for said one-half. *Act of July 1, 1898 (30 Stat. L., 631).*

Agreement that contractor shall look solely to State for half expenses, etc.

1079. The provisions of an act of Congress entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-nine, and for other purposes," approved July first, eighteen hundred and ninety-eight, authorizing the Secretary of War, in expending certain specified appropriations in the preparation for and construction of certain works for the restraining or impounding of mining débris in the State of California, to enter into a contract or contracts wherein the contractor or contractors shall look solely to that State for one-half of such expense, and that the United States shall in no wise be liable for said one-half, are hereby extended to any appropriations, when made, that may hereafter be made for said purposes.[1] *Act of March 3, 1899 (30 Stat. L., 1148).*

Contractor to look to State of California for one-half of cost of works. Mar. 3, 1899, v. 30, p. 1148.

1080. The Secretary of War, in carrying out the provisions of any act of Congress providing for the restraining or impounding of mining débris in California, may, in his discretion, when in his judgment the aggregate of appropriations already made by said State and Congress and available therefor are sufficient to complete the same, undertake the works necessary thereto by hired labor and by purchase of supplies and materials therefor, and may accept payments on account thereof as the work progresses under and according to the provisions of the acts of the legislature of said State for such purposes. *Ibid.*

Work may be done by hired labor. *Ibid.*

1081. Officers of the commission traveling on duty in connection with the commission's work may be paid their actual traveling expenses in lieu of mileage allowed by law, and shall hereafter receive no mileage. *Act of March 3, 1899 (30 Stat. L., 1109).*

Actual expenses allowed for travel. Mileage prohibited. *Ibid.*

---

[1] The act of July 1, 1898 (30 Stat. L., 631), contained a similar requirement.

THE ISTHMIAN CANAL COMMISSION.

Commission. Duties. Mar. 3, 1899, s. 3, v. 30, p. 1150.

1082. The President of the United States of America be, and he is hereby, authorized and empowered to make full and complete investigation of the Isthmus of Panama with a view to the construction of a canal by the United States across the same to connect the Atlantic and Pacific oceans; that the President is authorized to make investigation of any and all practicable routes for a canal across said Isthmus of Panama, and particularly to investigate the two routes known respectively as the Nicaraguan route and the Panama route, with a view to determining the most practicable and feasible route for such canal, together with the proximate and probable cost of constructing a canal at each of two or more of said routes. And the President is further authorized to investigate and ascertain what rights, privileges and franchises, if any, may be held and owned by any corporations, associations, or individuals, and what work, if any, has been done by such corporations, associations, or individuals in the construction of a canal at either or any of said routes, and particularly at the so-called Nicaraguan and Panama routes, respectively; and likewise to ascertain the cost of purchasing all of the rights, privileges, and franchises held and owned by any such corporations, associations, and individuals in any and all of such routes, particularly the said Nicaraguan route and the said Panama route; and likewise to ascertain the probable or proximate cost of constructing a suitable harbor at each of the termini of said canal, with the probable annual cost of maintenance of said harbors, respectively. And generally the President is authorized to make such full and complete investigation as to determine the most feasible and practicable route across said Isthmus for a canal, together with the cost of constructing the same and placing the same under the control, management, and ownership of the United States. *Sec. 3, act of March 3, 1899 (30 Stat. L., 1150).*

Compensation, employees, etc. Sec. 4, ibid.

1083. To enable the President to make the investigations and ascertainments herein provided for he is hereby authorized to employ in said service any of the engineers of the United States Army, at his discretion, and, likewise, to employ any engineer in civil life, at his discretion, and any other persons necessary to make such investigation, and to fix the compensation of any and all of such engineers and other persons. *Sec. 4, ibid.*

Funds for support of commission. Sec. 5, *ibid.*

1084. For the purpose of defraying the expenses necessary to be incurred in making the investigations herein provided for there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of one million dollars, or so much thereof as may be necessary, to be disbursed by order of the President. *Sec. 5, ibid.*

Report. Sec. 6, *ibid.*

1085. The President is hereby requested to report to Congress the results of such investigations, together with his recommendations in the premises. *Sec. 6, ibid.*

FORTIFICATIONS.[1]

Par.
1086. Procurement of sites.
1087. Donations of land.
1088. Procedure in emergency.
Par.
1089. Disbursements.
1090. Injury to mines, torpedoes, etc.; penalty.

Procurement of sites. Aug. 18, 1890, v. 26, p. 316.

1086. Hereafter the Secretary of War may cause proceedings to be instituted in the name of the United States in any court[2] having jurisdiction of such proceedings for

---

[1] See also the title "Board of Ordnance and Fortification," in the chapter entitled THE ORDNANCE DEPARTMENT. See also par. 696, *ante.*

The act of February 10, 1875, contained the following provision: "For torpedoes for harbor defenses and the preservation of the same, and for torpedo experiments in their application to harbor and land defense, and for instruction of engineer battalion in their preparation and application, fifty thousand dollars: *Provided,* That the money herein appropriated for torpedoes shall only be used in the establishment and maintenance of torpedoes to be operated from shore stations for the destruction of an enemy's vessel approaching the shore or entering the channels and fairways of harbors," which was repeated in the acts of February 10, 1875, June 20, 1876, March 3, 1877, March 23, 1878, March 3, 1879, May 4, 1880, March 3, 1881, and May 19, 1882. The act of March 3, 1883, contained the requirement that "one-half of the money herein appropriated may be used in the purchase of torpedoes of the latest improvement."

If, in the opinion of the Chief of Engineers, a contemplated building will be an appliance necessary in the operation of submarine mines for the defense of harbors, or will, when completed, be used in operating such mines, or in such a way as to render their operation possible for the defense of harbors, the cost of its erection is chargeable to the appropriation for torpedoes for harbor defense. 3 Compt. Dec., 30.

[2] A proceeding to condemn lands for the use of the United States under this statute is properly brought in a district court of the United States. In such proceeding the practice should be in substantial conformity with that pursued in the courts of the State in which the lands are situated, when similar proceedings are there instituted. U. S. *v.* Engeman, 45 Fed. Rep., 546.

The manner in which the power of eminent domain of the United States shall be exercised is a matter of legislative discretion, and Congress, by the act of August 1, 1888 (25 Stat. L., 357), has vested in the United States circuit and district courts of the district in which land is situated jurisdiction of proceedings authorized to be instituted by any public officer to condemn such land for public purposes. By the act of August 18, 1890 (26 Stat. L., 316), the Secretary of War is authorized to cause proceedings to be instituted for the condemnation of land for military purposes "in any court having jurisdiction of such proceedings." *Held,* that said acts are *in pari materia,* and upon an application by the Secretary of War, under the latter act, the Attorney-General may, at his election, cause proceedings to be instituted for the condemnation of land for military purposes in either the State or Federal courts. Chappell *v.* U. S., 81 Fed. Rep., 764.

Where land proposed to be conveyed by a State to the United States for the pur-the acquirement, by condemnation, of any land, or right pertaining thereto, needed for the site, location, construction, or prosecution of works for fortifications and coast defenses, such proceedings to be prosecuted in accordance with the laws relating to suits for the condemnation of property of the States wherein the proceedings may be instituted: *Provided*, That when the owner of such land or rights pertaining thereto shall fix a price for the same, which, in the opinion of the Secretary of War, shall be reasonable, he may purchase the same at such price without further delay. *Act of August 18, 1890 (26 Stat. L., 316).*

Donations.
Ibid.

1087. The Secretary of War is hereby authorized to accept on behalf of the United States donations of lands or rights pertaining thereto required for the above-mentioned purposes. *Ibid.*

Procedure in case of emergency.
J. R. No. 18.
Apr. 11, 1898, v. 30, p. 737.

1088. In case of emergency when, in the opinion of the President, the immediate erection of any temporary fort or fortification is deemed important and urgent, such temporary fort or fortification may be constructed upon the written consent of the owner of the land upon which such work is to be placed; and the requirements of section three hundred and fifty-five of the Revised Statutes shall not be applicable in such cases. *Joint resolution No. 18, of April 11, 1898 (30 Stat. L., 737).*

Disbursements.
July 5, 1838, c. 162, s. 27, v. 5, p. 260; July 7, 1838, c. 194, v. 5, p. 308.
Sec. 1153, R. S.

1089. It shall be the duty of the engineer superintending the construction of a fortification, or engaged about the execution of any other public work, to disburse the moneys applicable to the same; but no compensation shall be allowed him for such disbursements.[1]

---

pose of fortifications was described in the proffered deed as extending to the sea and in a line along the sea, *held* that such a deed would convey only land extending to and bounded by a high-water mark, and advised that the grant should be so expressed as specifically to include the shore to low-water mark, and should also embrace such water-covered lands as would be sufficient to prevent the erection, by the authority of the State, of structures that might interfere with the proper use of the land for purposes of fortifications. Dig. Opin. J. A. G., par. 1560.

[1] When an engineer officer is sent to any military department, fortress, garrison, or post, a duplicate of his orders will be sent to the commanding officer. On his arrival the engineer officer will communicate his orders, and necessary facilities for executing them will be afforded by the commanding officer. While so on duty, without being especially put under the direction of the commanding officer, the engineer officer will be furnished with copies of all orders and regulations of the command relative to etiquette and police, and with the countersign when quartered within a chain of sentinels. The engineer officer will report to the commanding officer when relieved from duty within the limits of the command. Par. 1689, A. R., 1901.

Engineer officers engaged in the construction of fortifications or other public works are entitled to the same allowances of quarters, mess rooms, and kitchens, with fuel for the same, as are provided by regulations for officers at garrisoned posts. Par. 1690, ibid.

When the Chief of Engineers is satisfied that any fortification is in all respects complete so far as the functions of his department are concerned, he will give notice

1090. Any person who shall willfully, wantonly, or maliciously trespass upon, injure, or destroy any of the works or property or material of any submarine mine or torpedo, or fortification or harbor-defense system owned or constructed or in process of construction by the United States, or shall willfully or maliciously interfere with the operation or use of any such submarine mine, torpedo, fortification, or harbor-defense system, or shall knowingly, willfully or wantonly violate any regulation of the War Department that has been made for the protection of such mine, torpedo, fortification or harbor-defense system shall be punished, on conviction thereof in a district court of the United States for the district in which the offense is committed, by a fine of not less than one hundred nor more than five thousand dollars, or with imprisonment for a term not exceeding five years, or with both, in the discretion of the court. *Act of July 7, 1898 (30 Stat. L., 717).*

Injuries to mines, torpedoes, etc.
July 7, 1898, v. 30, p. 717.

THE NAVIGABLE WATERS OF THE UNITED STATES.

Par.
1091. Navigable rivers.
1092. Rivers in Louisiana.
1093. The Iowa River.
1094. The Des Moines River.
1095. Rivers in Alabama.
1096. The Maquoketa River, Iowa.
1097. The Cuivre River, Missouri.

1091. All navigable rivers, within the territory occupied by the public lands, shall remain and be deemed public highways; and, in all cases where the opposite banks of any streams not navigable belong to different persons, the stream and the bed thereof shall become common to both.

Navigable rivers within public lands to be public highways.
May 18, 1796, c. 29, s. 9, v. 1, p. 468;
Mar. 3, 1803, c. 27, s. 17, v. 2, p. 235.
Sec. 2476, R. S.

1092. All the navigable rivers and waters in the former Territories of Orleans and Louisiana shall be and forever remain public highways.[1]

Rivers in Louisiana.
Mar. 3, 1811, c. 46, s. 12, v. 2, p. 606.
Sec. 5251, R. S.

---

thereof to the Secretary of War, that it may be turned over for occupation by the troops. Until its completion has been announced, no work will be occupied by troops except by the special order of the Secretary of War. Par. 1486, A. R. 1895.

No alterations will be made in any fortification or in its casemates, quarters, barracks, magazines, storehouses, or any other building belonging to it, nor will any building of any kind or work of earth, masonry, or timber be erected within the fortification or within a mile of its exterior, except under the direction of the Chief of Engineers United States Army and by authority of the Secretary of War. Par. 1691, A. R., 1901.

[1] The doctrine of the common law as to the navigability of waters has no application in this country. Here the ebb and flow of the tide do not constitute the usual test, as in England, or any test at all of the navigability of waters. The test by which to determine the navigability of waters in our rivers is found in their navigable capacity. Those rivers are navigable rivers in law which are navigable in fact. Rivers are navigable in fact when they are used, or are susceptible of being used, in their ordinary condition, as highways for commerce, on which trade and travel are, or may be conducted, in the customary modes of trade and travel on waters; and they constitute navigable waters of the United States, within the meaning of the acts of Congress, in contradistinction from the navigable waters of the States, when they form,

The Iowa river. July 13, 1868, Res. No. 55, v. 15, p. 257; May 6, 1870, c. 92, v. 16, p. 121. Sec. 5248, R. S.

1093. So much of the Iowa River within the State of Iowa as lies north of the town of Wapello shall not be deemed a navigable river or public highway, but dams and bridges may be constructed across it.

---

in their ordinary condition, by themselves, or by uniting with other waters, a continued highway over which commerce may be carried on with other States or foreign countries in the customary modes in which such commerce is conducted by water. The Daniel Ball, 10 Wall., 557; The Montello, 11 Wall., 411; Ex parte Boyer, 109 U. S., 629.

If a river is not of itself a highway for commerce with other States or foreign countries, or does not form such highway by its connecton with other waters, and is only navigable between different places within the State, it is not a navigable water of the United States, but only a navigable water of a State. The Montello, 11 Wall., 411.

The right to regulate commerce includes the right to regulate navigation, and hence to regulate and improve navigable rivers and ports on such rivers. So. Car. *v.* Ga., 93 U. S., 4; Gilman *v.* Philadelphia, 3 Wall., 713.

In the case of the Willamette Bridge Co. *v.* Hatch (125 U. S., 1), it was held that clauses similar to that contained in the ordinance of 1787 (1 Stat. L., 52, note) to the effect that "the navigable waters leading into the Mississippi and the St. Lawrence, and the carrying places between them, shall be common highways and forever free, as well to the inhabitants of the said territory as to the citizens of the United States and those of any other States that may be admitted into the Confederacy, without any tax, impost, or duty therefor" (see also act of February 14, 1859, 11 Stat. L., 383), do not refer to physical obstructions, but to political regulations which would hamper the freedom of commerce, * * * and can not be regarded as establishing the police power of the United States over such river, or as giving the Federal courts jurisdiction to hear and determine, according to Federal law, every complaint that may be made of an impediment in, or an encroachment upon, the navigation of these rivers. * * * Nor does the expenditure of money in improving navigation of such rivers import an assumption of police power.

When Congress, in the exercise of its exclusive power to direct how the public money shall be employed, has appropriated a certain sum to be devoted, without exceptions or provisos, to a certain specific internal improvement, it devolves upon the Executive Department of the Government, charged as it is with the execution of the laws enacted by the Legislature, to proceed with the work under the appropriation, without entertaining any question as to the expediency of the expenditure. Thus where Congress had made in general terms an appropriation of a specific amount for improving a certain river, advised that it was for the officer charged with the improvement simply to do the work, without delaying, to raise or consider questions or claims of title to the land, etc., to be affected by the improvement; such matters being quite beyond the province of an executive official under the circumstances. Dig. Opin. J. A. G., par. 1487.

The United States is not the owner of the soil of the beds of navigable waters [see the definition of the term "navigable waters of the United States," in The Daniel Ball, 10 Wall., 557; Ex parte Boyer, 109 U. S., 629], nor of the shores of tide waters below high-water mark, nor of the shores of waters not affected by the tide below the ordinary water line of the same, except as it may have become grantee of such soil from the State or from individuals. The property and jurisdiction in and over the beds and shores of navigable waters is in general in the State, or in the individual riparian owner [Pollard *v.* Hagan, 3 How., 212; Barney *v.* Keokuk, 94 U. S., 337; Gilman *v.* Philad., 3 Wall., 713; South Carolina *v.* Georgia, 93 U. S., 4; VI Opin. Att. Gen., 172; VII ibid., 314; XVI ibid., 479]. But under the power to regulate commerce Congress may assume, as it has recently assumed, the power so to regulate navigation over navigable waters within the States as to prohibit its obstruction and to cause the removal of obstructions thereto, and such power when exercised is "conclusive of any right to the contrary asserted under State authority. [Wisconsin *v.* Duluth, 96 U. S., 379]. In exercising this power it can not divest rights of title or occupation in a State or individuals, but these rights are left to be enjoyed as before, subject, however, to the paramount public right of freeing navigation from obstruction possessed and exercised by the United States through Congress. In the execution of the laws relating to obstructions to navigation the Secretary of War has no general authority, but only such as may have been vested in him by legislation of Congress, especially in the river and harbor appropriation acts. Ibid., par. 1773.

As between the United States and a State, the soil of the bed of navigable waters and of the shores of tide waters below high-water mark, or—on rivers not reached

1094. The Des Moines River shall forever remain free from any toll, or other charge whatever, for any property of the United States, or persons in their service, passing along the same.

The Des Moines River.
Aug. 8, 1846, c. 103, s. 3, v. 9, p. 78; Jan. 20, 1870, c. 7, v. 16, p. 61.
Sec. 5246, R. S.

---

by the tide—the soil of the shores below the ordinary water line (as not affected by freshet or unusual drought) belongs to the State. But natural accretions to land owned by private individuals belong to the owners of the land. Thus, *held*, that the accretions to Hog Island, in the mouth of the Missouri River, belonged, not to the United States or to the State of Missouri, but to the owner of the island. Ibid., pars. 1559, 1711 and 1712.

Where the title to tide lands along the shores of a State is vested in such State by virtue of its sovereignty, and tide lands along the shores of any Territory are held in trust by the General Government for the future State, nevertheless the rule now is that, during the Territorial period, the United States holds the permanent title to tide lands and may make grants thereof. Carroll *v.* Prince, 81 Fed. Rep., 138; Shively *v.* Bowlby, 152 U. S., 1; Mann *v.* Land Co., 153, ibid., 273.

Held, that it was doubtful whether "floatable" streams, i. e., streams capable only of being used for floating saw logs, timber, etc., not being navigable in a general sense, were included in the term "navigable waters of the United States," as employed in statutes providing that dams shall not be constructed in such waters without the permission of the Secretary of War. But *held*, that it was clearly competent for Congress, under the commerce clause of the Constitution, to exercise legislation over such streams as highways of interstate commerce. Dig. Opin. J. A. G., par. 1793. See also Martin *v.* Waddell, 16 Pet., 367; Pollard *v.* Hagan, 3 How., 212; Pennsylvania *v.* Wheeling Bridge Co., 13 How., 518; Den *v.* Jersey Co., 15 How., 426.

POWER OF THE STATES.

Until the dormant power of the Constitution is awakened and made effective by appropriate legislation the reserved power of the State is plenary, and its exercise in good faith can not be made the subject of review by this court. Gilman *v.* Philadelphia, 3 Wall., 713. The power to construct work of rivers and harbor improvement in the navigable waters of the United States, as an incident of the power to regulate commerce "covering as it does a wide field, and embracing a great variety of subjects, some of which will call for uniform rules and national legislation, while others can best be regulated by rules suggested by the varying circumstances of differing places, and limited in their operation to such places respectively; and to the extent required by these last cases, the power to regulate commerce may be exercised by the States." Ibid. However, Congress may interpose whenever it shall be deemed necessary, by either general or special laws. It may regulate all bridges over navigable waters, remove offending bridges, and punish those who shall thereafter erect them. Ibid. It is for Congress to determine when its full power shall be brought into activity, and as to the regulations and sanctions which shall be provided. U. S. *v.* New Bedford Bridge, 1 Woodbury and Minot, 420, 421; U. S. *v.* Cornet, 12 Pet., 72; N. Y. *v.* Milne, 11 Pet., 102, 155; The Wheeling Bridge Cases, 13 How., 518; 18 ibid., 521.

A State has power to change the channels of rivers within the State for purposes of internal improvement. Withers *v.* Buckley, 20 How., 84; So. Car. *v.* Ga., 93 U. S., 4. In the absence of legislation by Congress, a State statute authorizing the erection of a dam across a navigable river which is wholly within its limits is not unconstitutional. Wilson *v.* Blackbird Creek Marsh Co., 2 Pet., 245; Pound *v.* Turck, 95 U. S., 459.

Acts of Congress merely making appropriations for the improvement of a river lying within a State do not operate as an inhibition against State legislation authorizing the construction of booms, dams, piers, etc., so as to make unlawful such structures when erected under State authority. U. S. *v.* Bellingham Bay Boom Co., 81 Fed. Rep., 658. To bring obstructions and nuisances in navigable waters lying within a State within the cognizance of the Federal courts, there must be some statute of the United States directly applicable to such streams. Ibid., 58; Wilson *v.* Marsh Co., 2 Peters, 245, 252; Gilman *v.* Philadelphia, 3 Wallace, 713; The Passaic Bridges, ibid., 782, 793; Pound *v.* Turck, 95 U. S., 459; Escanaba and L. M. Transpn. Co. *v.* Chicago, 107 U. S., 78, 83; Cardwell *v.* Bridge Co., 113 U. S., 205, 208; Bridge Co. *v.* Hatch, 125 U. S., 8. The act of September 19, 1890 (26 Stat. L., 426), which, in section 10, prohibits the creation of any obstruction not "affirmatively authorized by law" to the navigable capacity of waters over which the United States has juris-

Certain rivers in Alabama to be free from tolls.
May 23, 1828, c. 75, s. 7, v. 4, p. 290.
Sec. 5244, R. S.

1095. The Tennessee, Coosa, Cahawba, and Black Warrior Rivers, within the State of Alabama, shall be forever free from toll for all property belonging to the United States, and for all persons in their service, and for all citizens of the United States, except as to such tolls as may be allowed by act of Congress.[1]

The Maquoketa River.
July 13, 1868, Res. No. 55, s. 1, v. 15, c. 257.
Sec. 5250, R. S.

1096. The assent of Congress is given to the construction of bridges across the Maquoketa River, within the State of Iowa, with or without draws, as may be provided by the laws of that State.[2]

---

diction, was not retroactive so as to make unlawful the continuance of a boom constructed prior to its passage, under the authority of a State law. U. S. *v.* Bellingham Bay Boom Co., 81 Fed. Rep., 658; U. S. *v.* Burns, 54 Fed. Rep., 351, 362.

The authority conferred upon the Secretary of War by the act of June 29, 1888 (25 Stat. L., 209), does not extend to the waters of the Hudson River as far distant as Troy, Albany, and New Baltimore. The term "tributary waters," as used in that act, covers only such parts of the river as, in a broad sense, can be regarded as connected with that harbor. XIX Opin. Att. Gen., 317.

The waters of the East River comprise navigable waters of the United States lying wholly within the limits of a State. XX Opin. Att. Gen., 479.

The Chicago River is navigable and under control of Congress; but until that body acts the State of Illinois has authority, and may vest in the city of Chicago jurisdiction over the construction of a bridge within the city limits. Escanaba Co. *v.* Chicago, 107 U. S., 678. The State of Michigan authorized the improvement of a river wholly within that State, and the exaction of the tolls for the use of the river so improved. *Held*, that the statute did not impair the contract contained in the ordinance of 1787, giving the people the right to use the waters leading into the St. Lawrence free of duty, tax, or impost. Sands *v.* Manistee River Imp. Co., 123 U. S., 288; Ruggles *v.* The same, ibid., 297.

[1] *Tide lands.*—In this country waters to be navigable in law must be capable of navigation in fact as a highway for commerce. [Where evidence as to the character of a stream is conflicting, whether it is a navigable stream within the meaning of section 3 of the act of July 13, 1892 (27 Stat. L., 110), is a question of law and fact for the jury. Leovy *v.* U. S., 92 Fed. Rep., 344.] A bay or arm of one of the Great Lakes, some 4,000 acres in extent, of the average depth of not more than 2 feet and rarely more than 3 feet, covered with grass and rushes in summer, and which was surveyed and patented to the State as swamp land is not navigable water, but merely a marsh, and subject to private ownership. Toledo Liberal Shooting Club *v.* Erie Shooting Club Co., 90 Fed. Rep., 680; Barney *v.* Keokuk, 94 U. S., 324; The Daniel Ball, 10 Wallace, 557–563; The Montello, 20 Wallace, 430–441.

The title to tide lands along the shores of a State is vested in such State by virtue of its sovereignty, and tide lands along the shores of any Territory are held in trust by the General Government for the future State; nevertheless, the rule now is that during the Territorial period the United States holds the permanent title to tide lands, and may make grants thereof. Carroll *v.* Price, 81 Fed. Rep., 137; Shively *v.* Bowlby, 152 U. S., 1; Mann *v.* Land Co., 153 U. S., 273.

Marshes and mud shoals on the sides of harbors and streams within the influence of the tides may be granted by the State to private parties when this can be done without interfering with the public rights of navigation in the streams and harbors themselves, and in South Carolina marsh lands of this character have always been treated as subject to grant. But as to public navigable streams themselves, the sovereign holds them in trust for the public use, and can make no valid grant thereof, such as would hinder or impede the rights of the public therein. Chisolm *v.* Caines, 7 Fed. Rep., 285; Illinois Central R. R. Co., 14 U. S., 45; Shively *v.* Bowlby, 152 U. S., 548; Lowndes *v.* Board, 153 ibid., 758; Hardin *v.* Jordan, 140 ibid., 371; City of Hoboken *v.* Pennsylvania R. R. Co., 124 ibid., 56.

Wharves come within admiralty jurisdiction. In England wharf property may extend to low-water mark; in this country to the point of navigability. Cliffords Case, 34 Ct. Cls., 223.

[2] *Riparian rights.*—The rights of riparian owners of land situated upon navigable rivers are to be measured by the rules and decisions of the courts of the State in which the land is situated, whether it be one of the original States or a State admitted

1097. Cuivre River, in the counties of Lincoln and Saint Charles, in the State of Missouri, being the dividing line, is hereby declared not to be a navigable stream, and shall be so treated by the Secretary of War and all other authorities. *Act of March 23, 1900 (31 Stat. L., 50).*

Cuivre River, Mo., declared not navigable. Mar. 23, 1900, v. 31, p. 50.

RIVER AND HARBOR WORKS.[1]

PRELIMINARY SURVEYS—ESTIMATES—REPORTS.

Par.		Par.	
1098.	Reports.	1102.	Estimates.
1099, 1100, 1101.	Restriction on surveys, etc.	1103.	Annual reports.

1098. In every case where surveys are made, the report thereon shall embrace such information concerning the commercial importance, present and prospective, of the

Reports. Aug. 2, 1882, v. 22, p. 213.

---

after the adoption of the Constitution. St. Anthony Falls Water Power Co. *v.* St. Paul Water Commissioner, 168 U. S., 349; Martin *v.* Waddell, 16 Peters, 367; Pollard *v.* Hagan, 3 Howard, 212; Goodtitle *v.* Kibbe, 9 Howard, 471; Barney *v.* Keokuk, 94 U. S., 324; The Genesee Chief, 12 Howard, 443; St. Louis *v.* Myers, 113 U. S., 566; Packer *v.* Bird, 137 U. S., 661; Hardin *v.* Jordan, 140 U. S., 371; St. Louis *v.* Rutz, 138 U. S., 226, 242; Kaukauna Water Power Co. *v.* Green Bay and Mississippi Canal Co., 142 ibid., 254; City of Janesville *v.* Carpenter, 77 Wisconsin, 288, 300; Shively *v.* Bowlby, 152 U. S., 1.

The royal charters granted by the English Crown to the founders of the Atlantic colonies conveyed to the grantees both the territory described and the powers of government; and, under such charters, the dominion or property in the navigable waters and in the soil under them passed as a part of the prerogative rights annexed to the political powers conferred on the patentees, and in their hands were intended to be a trust for the common use and benefit of the new communities, and not as private property which could be parceled out and sold; and, on the Revolution, such rights became vested in the several States for like purposes, where such as were not surrendered by the Constitution to the Federal Government remain. Morris *v.* U. S., 174 U. S., 196.

Taking of lands for public use.—When the Government, for the purpose of improving the navigation of a river, takes possession of submerged land which is in the use and possession of a citizen under a right derived from the State, it takes private property for a public use, and must compensate the owner therefor. Brown *v.* U. S., 81 Fed. Rep., 55.

Acts done in the proper exercise of governmental powers, and not directly encroaching upon private property, although their consequences may impair its use, are not a taking within the meaning of the constitutional provision which forbids the taking of such property for public use without just compensation therefor. Transportation Co. *v.* Chicago, 99 U. S., 635; XVIII Opin. Att. Gen., 64. The United States may occupy and use soil within the bed of a river for the improvement of the navigation of such river, such occupation and use not giving rise to a question under the law of eminent domain, the soil being held by its owners subject to the higher right of the United States in respect to the navigation of the river. XVIII Opin. Att. Gen., 64; High Bridge Lumber Co. *v.* U. S., 9 Fed. Rep., 320; Cooley, Constitutional Limitations, pp. 541–543; Railroad Co. *v.* Bingham, 87 Tenn., 522; Smith *v.* Washington, 20 Howard, 135; Transportation Co. *v.* Chicago, 99 U. S., 635–641.

[1] Section 6 of the act of June 3, 1896 (29 Stat. L., 235), contained the requirement that the "Secretary of War is hereby authorized and directed to cause to be made and transmitted to the first session of the Fifty-fifth Congress a compilation giving a complete list of all the preliminary examinations that have heretofore been made, date of report, with a statement as to each, whether favorable or unfavorable for survey; also a complete list of all surveys that have heretofore been made, with a statement as to each, whether favorable for adoption or unfavorable, and date of report, amount recommended for completion and amount recommended for each to be expended during the fiscal year beginning July first, eighteen hundred and ninety-

improvement contemplated thereby, and such general commercial statistics as the Secretary of War may be able to procure.[1] *Act of August 2, 1882 (22 Stat. L., 213).*

Restriction on surveys, etc. Mar. 3, 1899, s. 2, v. 30, p. 1149.

1099. No preliminary examination,[2] survey, project, or estimate for new works other than those designated in this or some prior act or resolution shall be made. *Sec. 2, act of March 3, 1899 (30 Stat. L., 1149).*

The same. *Ibid.*

1100. After the regular or formal report on any examination, survey, project, or work under way or proposed is submitted, no supplemental or additional report or estimate for the same fiscal year shall be made unless ordered by a concurrent resolution of Congress. *Sec. 2, act of March 3, 1899 (30 Stat. L., 1149).*

---

eight, by both the Chief of Engineers and the engineer in charge; also a complete list of all projects now under construction or maintenance, together with the year when adopted, and if modified, when, the total amount expended on each project and estimate of amount required to complete the same, and amount recommended by the Chief of Engineers and by the engineer in charge to be expended during the fiscal year beginning July first, eighteen hundred and ninety-eight, the amount appropriated for each project by this act, making reference to the report of the Chief of Engineers where report of each project is given, together with a statement containing the amount of the unexpended balance to the credit of each project July first, eighteen hundred and ninety-seven, whether under construction, work suspended, or appropriation made and work not commenced; also the total amounts appropriated heretofore for the improvement and maintenance of the rivers and the total amounts heretofore appropriated for the improvement and maintenance of harbors in each river and harbor act; also the total amount of appropriation by States for the improvement of rivers and harbors." The report above required was furnished to Congress by the Chief of Engineers on May 13, 1898. Document No. 482, H. R., 55th Congress, 2d session.

Section 2 of the act of June 3, 1896 (29 Stat. L., 234), contained the requirement that "The Secretary of War is directed to cause to be prepared a compilation of all general laws that have been enacted from time to time by Congress for the maintenance, protection, and preservation of the navigable waters of the United States which are now in force, and to submit the same to Congress at its session in December next, together with such recommendation as to revision, emendation, or enlargement of the said laws as, in his judgment, will be advantageous to the public interest."

[1] This provision was repeated in the acts of July 5, 1884 (23 Stat. L., 153), August 5, 1886 (24 ibid., 335), August 11, 1888 (25 ibid., 433), and September 19, 1890 (26 ibid., 464).

[2] The acts of July 13, 1892 (27 Stat. L., 115), and August 7, 1894 (28 ibid., 369), contained the requirement that "The preliminary examinations ordered in this act shall be made by the local engineer in charge of the district, or an engineer detailed for the purpose; and such local or detailed engineer and the division engineer of the locality shall report to the Chief of Engineers, first, whether, in their opinion, the harbor or river under examination is worthy of improvement by the General Government, and shall state in such report fully and particularly the facts and reasons on which they base such opinions, including the present and prospective demands of commerce; and, second, if worthy of improvement by the General Government, what it will cost to survey the same, with a view of submitting plan and estimate for its improvement; and the Chief Engineer shall submit to the Secretary of War the reports of the local and division engineers, with his views thereon and his opinion of the public necessity or convenience to be subserved by the proposed improvement; and all such reports of preliminary examinations, with such recommendations as he may see proper to make, shall be transmitted by the Secretary of War to the House of Representatives, and are hereby ordered to be printed when so made." The acts of August 2, 1882 (22 Stat. L., 213), July 5, 1884 (23 ibid., 153), August 5, 1886 (25 ibid., 433), September 19, 1890 (26 ibid., 464), August 17, 1894 (28 ibid., 372), and June 3, 1896 (29 ibid., 234), contained similar requirements.

1101. The Government shall not be deemed to have entered upon any project for the improvement of any waterway or harbor mentioned in this act until funds for the commencement of the proposed work shall have been actually appropriated by law.[1] *Sec. 2, act of March 3, 1899 (30 Stat. L., 1149).*

The same. *Ibid.*

1102. Hereafter the Secretary of War shall annually submit estimates in detail for river and harbor improvements required for the ensuing fiscal year to the Secretary of the Treasury, to be included in, and carried into the sum total of, the Book of Estimates.[2] *Act of June 4, 1897 (30 Stat. L., 48).*

Estimates. June 4, 1897, v. 30, p. 48.

1103. The Secretary of War shall cause the manuscript of the annual report of the Chief of Engineers and subordinate engineers, relating to the improvement of rivers and harbors, and the report of the Mississippi and Missouri River commissions to be placed in the hands of the Public Printer on or before the fifteenth day of October in each year, and the Public Printer shall cause said reports to be printed, with an accurate and comprehensive index thereof, on or before the first Monday in December in each year, for the use of Congress. *Sec. 8, act of August 11, 1888 (25 Stat. L., 424).*

Annual report of Chief of Engineers. Sec. 8, Aug. 11, 1888, v. 25, p. 424.

CONTRACTS AND PURCHASES.[3]

Par.		Par.	
1104.	Application of appropriations; contracts.	1105.	Two or more works in one contract.
		1106.	Purchases of lands.

1104. It shall be the duty of the Secretary of War to apply the money herein and hereafter appropriated for improvements of rivers and harbors, other than surveys, estimates, and gaugings, in carrying on the various works, by contract or otherwise, as may be most economical and advantageous to the Government. Where said works are done by contract, such contract shall be made after sufficient public advertisement for proposals, in such manner and form as the Secretary of War shall prescribe; and such contracts shall be made with the lowest responsible bidders, accompanied by such securities as the Secretary of War shall require, conditioned for the faithful prosecu-

Application of appropriations. Sec. 3, Aug. 11, 1888, v. 25, p. 423.

Contracts.

---

[1] For a similar provision see section 14, act of August 1, 1888 (25 Stat. L., 433), and section 13, act of August 17, 1894 (28 ibid., 371).

[2] The act of March 3, 1893 (27 Stat. L., 603), contained a similar requirement.

[3] See also the chapter entitled CONTRACTS AND PURCHASES, the requirements of which prevail in all purchases in behalf of the United States except those expressly excepted in this chapter.

tion and completion of the work according to such contract.[1] *Sec. 3, act of August 11, 1888 (25 Stat. L., 423).*

Two or more works may be in one contract, etc. R. S., sec. 3717, p. 734, modified; v. 25, p. 423. Sec. 2, Sept. 19, 1890, v. 26, p. 452.

1105. Nothing contained in section thirty-seven hundred and seventeen of the Revised Statutes of the United States, nor in section three of the river and harbor act of August eleventh, eighteen hundred and eighty-eight, shall be so construed as to prohibit or prevent the cumulation of two or more works of river and harbor improvement in the same proposal and contract, where such works are situated in the same region and of the same kind or character.[2] *Sec. 2, act of September 19, 1890 (26 Stat. L., 452).*

---

[1] The appropriation of money for the improvement of a harbor on a navigable river confers discretionary power upon the Secretary of War as to the means by which such improvement shall be effected. So. Car. *v.* Ga., 93 U. S., 4. The operations of the Government in this regard have been conducted by the Bureau of Engineering, as part of the War Department, to which Congress has confided the execution of its wishes in all those matters. * * * It can not be necessary to say that, when a public work of this character has been inaugurated or adopted by Congress and its management placed in control of its officers, there exists no right in any other branch of the Government to forbid the work or to require the undoing of what has been done or to prescribe the manner in which it shall be conducted. Wisconsin *v.* Duluth, 96 U. S., 379. For these purposes Congress possesses all the powers which existed in the States before the adoption of the Constitution, and which have always existed in the Parliament of England. Gilman *v.* Philadelphia, 3 Wall., 713.

Where an officer or agent, charged under the Secretary of War and the Chief of Engineers with the duty of making purchases out of the appropriations for river and harbor improvements, certifies that the prices paid were the lowest market rates and the mode of expenditure adopted the most economical and advantageous to the Government, and the Chief of Engineers approves his account so far as relates to the necessity and expediency of the expenditures and the prices paid, it is not within the province of the accounting officers to call in question the degree of wisdom or skill which may have accompanied the exercise of administrative discretion. 3 Compt., Dec. 22. It is the duty of the proper officers of the War Department to determine when such an emergency exists requiring immediate delivery of property necessary for river and harbor improvements as will authorize its purchase in open market without advertisement. Discretionary power in this respect is vested by law in the War Department, and the exercise of such discretion is not properly reviewable by the accounting officers. 3 Dig. 2nd Compt., Dec., par. 1116.

[2] This provision was repeated in the act of August 5, 1886 (24 Stat. L., 330).

For instructions of the Comptroller of the Treasury respecting the rendition of accounts of disbursing officers of the Corps of Engineers, see Vol. IV, Compt. Dec., 727.

Appropriations for continuing the improvement of rivers and harbors, not being limited to a particular fiscal year and being made, by section 5 of the act of June 20, 1874 (18 Stat. L., 110), available until otherwise ordered by Congress, may be used for the payment of expenses properly incurred at any time after the work for which they are made was authorized. II Compt. Dec., 496.

An appropriation made for the improvement of a river by dredging can not be used to build a training wall as part of the improvement. III Compt. Dec., 32; see also II Compt. Dec., 256.

Contractors making rock excavations on Government property for river improvements are to be considered, so far as regards their duty to avoid injuring third persons, as owners of the premises, and are not required to use extraordinary care, such as covering their blasts, but only ordinary care. Passengers on river steamboats, which are permitted to land near the place where such blasting is carrried on with the express understanding that the boat owner must assume all responsibility, are to be regarded as there by mere permission or sufferance and at their own peril, if ordinary care is used. Smith *v.* Day, 86 Fed. Rep., 62; Morgan *v.* Penn. R. R. Co., 7 Fed. Rep., 78; Eisenberg *v.* Railway Co., 33 Missouri Appeals, 91; Transit Co. *v.* Rourke, 10 Illinois Appeals, 478; Railroad Co. *v.* Griffin, 100 Indiana, 223. One who goes voluntarily, in the prosecution of his own business, on public lands where improvements are going on or are being made by contractors, knowing that blasting

PURCHASE OF LANDS.

Condemnation of lands for river and harbor improvements.

Apr. 24, 1888, v. 25, p. 94

1106. The Secretary of War may cause proceedings to be instituted, in the name of the United States, in any court having jurisdiction of such proceedings, for the acquirement by condemnation of any land, right of way, or material needed to enable him to maintain, operate, or prosecute works for the improvement of rivers and harbors for which provision has been made by law; such proceedings to be prosecuted in accordance with the laws relating to suits for the condemnation of property of the States wherein the proceedings may be instituted: *Provided, however*, That when the owner of such land, right of way, or material shall fix a price for the same, which in the opinion of the Secretary of War shall be reasonable, he may purchase the same at such price without further delay: *And provided further*, That the Secretary of War is hereby authorized to accept donations of lands or materials required for the maintenance or prosecution of such works.[1] *Act of April 24, 1888 (25 Stat. L., 94).*

---

is going on there, assumes the risks incident to the prosecution of the work with ordinary care, though he is there by the sufferance or permission of the contractors. Smith *v.* Day et al., 86 Fed. Rep., 62.

The surgical and hospital expenses of a civil employee injured in the course of his service upon a Government work are not a proper charge against the Government in the absence of express statutory provision therefor. 1 Compt. Dec., 2; ibid., 181; ibid., 271.

The continuous-contract system.—By the act of June 3, 1896 (29 Stat. L., 207), the construction of works of river and harbor improvement by the continuous-contract system was authorized by Congress. The practice has been followed in subsequent acts of appropriation. The application of this system to a particular work involves the establishment of a limit of cost in the act authorizing it to be undertaken, and the authorization of the execution of contracts for the whole or a part of the work of construction, subject to the restriction that the amount expended in any fiscal year shall not exceed the sum specifically appropriated by Congress, such sum being in general a certain per cent of the entire estimated cost of construction.

[1] For general provisions in respect to the acquisition of land by the United States, see the act of August 1, 1888, and the chapters entitled THE PUBLIC LANDS and THE DEPARTMENT OF JUSTICE. The acts of June 14, 1880 (21 Stat. L., 193), and March 3, 1881 (ibid., 482), authorized the expenditure of funds in the acquisition of sites for river and harbor improvements, by voluntary purchase or condemnation, under the direction of the Secretary of War, with the proviso "that if the owners of such lands shall refuse to sell them at reasonable prices, then the prices to be paid shall be determined and the title and jurisdiction procured in the manner prescribed by the laws of the State in which such lands or sites are situated."

In a suit brought in a United States court to condemn land for use in connection with the work of improving a river, the expenses of taking the jury to view the land are payable from the appropriation of the Department of Justice made for the expenses of the United States courts, and not from the War Department appropriation for the improvement in connection with which the land is needed. II Compt. Dec., 201.

MISCELLANEOUS PROVISIONS.

Par.
1107. Commercial statistics.
1108. Reports of deterioration.
Par.
1109. Fishways.
1110. Mileage.

Commercial statistics at river and harbor works.
Feb. 21, 1892, v. 26, p. 766; v. 14, pp. 73, 421.

1107. Owners, agents, masters, and clerks of vessels arriving at or departing from localities where works of river and harbor improvement are carried on shall furnish, on application of the persons in local charge of the works, a comprehensive statement of vessels, passengers, freight, and tonnage. That every person or persons offending against the provisions of this act shall, for each and every offense, be liable to a fine of one hundred dollars, or imprisonment not exceeding two months, to be enforced in any district court in the United States within whose territorial jurisdiction such offense may have been committed. *Act of February 21, 1891 (26 Stat. L., 766).*

Reports of deterioration.
Mar. 3, 1899, s. 7, v. 30, p. 1150.

1108. The Secretary of War shall cause the Chief of Engineers of the United States Army, in submitting his annual reports to Congress with regard to works of river and harbor improvement under his charge, to state what deterioration, if any, has taken place by destruction, decay, obstructions, or otherwise, in connection with any of such works, together with an estimate of the cost of rebuilding or repairing such works or removing such obstructions; and he shall also cause the said Chief of Engineers to recommend, with his reasons therefor, the discontinuance of appropriations for any river and harbor work which he may deem unworthy of further improvement.[1] *Sec. 7, act of March 8, 1899 (30 Stat. L., 1150).*

Fishways.
Sec. 11, Aug. 11, 1888, v. 25, p. 425.

1109. Whenever the improvements provided for by this act, or those which have heretofore been prosecuted by the United States, or may hereafter be undertaken, shall be found to operate (whether by lock and dam or otherwise) as obstructions to the passage of fish, the Secretary of War may, in his discretion, direct and cause to be constructed practical and sufficient fishways, to be paid for out of the general appropriations for the streams on which such fishways may be constructed.[1] *Sec. 11, act of August 11, 1888 (25 Stat. L., 425).*

---

[1] The act of March 3, 1899 (30 Stat. L., 1149), contains the requirement that "appropriations made for the respective works herein named, or so much thereof as may be necessary, may, in the discretion of the Secretary of War, be used for the repair and restoration of said works whenever from any cause they have become seriously impaired, as well as for the further improvement of said works."

Section 5 of the act of July 13, 1892 (27 Stat. L., 88), contained the requirement that no money thereafter appropriated for works of river and harbor improvement should be expended for dredging inside harbor lines duly established under the authority conferred by the statutes above set forth.

1110. In determining the mileage of officers of the Corps of Engineers traveling without troops on duty connected with works under their charge, no deduction shall be made for such travel as may be necessary on free or bond-aided or land-grant railways.[2] *Sec. 15, act of September 16, 1890 (26 Stat. L., 456).*

Mileage of engineer officers on land-grant roads, etc.

Sept. 16, 1890, s. 15, v. 26, p. 456.

OPERATION OF CANALS AND OTHER WORKS OF IMPROVEMENT.

Par.		Par.	
1111.	Tolls not to be levied or collected on canals.	1113.	Regulations to be posted.
1112.	Use of canals, etc., to be regulated by Secretary of War.		

1111. No tolls or operating charges whatsoever shall be levied or collected upon any vessel or vessels, dredges, or other passing water craft through any canal or other work

Tolls not to be levied or collected on canals, etc.

Sec. 4, July 5, 1884, v. 23, p. 147.

---

[1] *Held* (April, 1887), that under the acts appropriating money for the improvement of the Columbia River, to be expended under the direction of the Secretary of War, the Secretary, while authorized to make regulations for the prosecution and protection of the works of improvement, was not empowered to require, by such regulations, the removal of fish-traps and pound nets as obstructions to navigation; that it was not within the province of the Secretary of War to determine what is or what may become an obstruction to navigation, and cause to be removed the one or prohibited the other by a mere order or regulation, in the absence of authority given by specific legislation of Congress. Dig. Opin. J. A. G., par. 1781.

A fish weir, so constructed as in a measure to obstruct the navigation of navigable waters, can not legally be placed in such waters without the authority of the Secretary of War, who, by section 7, act of September 19, 1890, is empowered to grant permission for the purpose. And so of a boom desired to be placed in a navigable river. Ibid., par. 1784.

[2] The mileage allowance of officers of the Corps of Engineers when traveling on duty connected with river and harbor improvements, being an expense necessarily incidental to and incurred on account of such work, is properly payable from the appropriations therefor and not from the appropriation "Pay of the Army," at the special rates prescribed by army acts for mileage payable from said appropriation. 3 Dig. 2d Compt. Dec., par. 290.

Officers of the Corps of Engineers, or those on engineer duty, traveling on service connected with fortifications or works of public improvement, will be paid their travel allowances from the special appropriations for the work. When traveling on any other duty, the mileage will be paid by that branch of the service intrusted with such payments for the Army. Par. 1693, A. R., 1901.

The provision in the act of March 15, 1898 (30 Stat. L., 321), that "the maximum sum to be allowed and paid to any officer of the Army shall be seven cents per mile," applies to all officers of the Army, including officers of the Corps of Engineers. 4 Compt. Dec., 711. An officer of the Army traveling under orders and using a conveyance upon which transportation and subsistence are furnished or paid for by the Government is not entitled to mileage. Ibid., 429.

The movements of an army officer assigned to duty requiring him to move from place to place within the area of the district where his duties lie, for which he is furnished Government transportation, do not constitute "travel" within the meaning of the law allowing mileage for travel under orders. Ibid., 86.

The expense for transportation to a point not located on a railroad, incurred by an officer of the Inspector-General's Department in inspecting unserviceable river and harbor material, is properly payable from the appropriation for the river and harbor work. 3 Compt. Dec., 3.

for the improvement of navigation belonging to the United States; and for the purpose of preserving and continuing the use and navigation of said canals, rivers, and other public works without interruption, the Secretary of War, upon the application of the chief engineer in charge of said works, is hereby authorized to draw his warrant or requisition from time to time upon the Secretary of the Treasury to pay the actual expenses of operating and keeping said works in repair, which warrants or requisitions shall be paid by the Secretary of the Treasury, out of any money in the Treasury not otherwise appropriated: *Provided, however*, That an itemized statement of said expenses shall accompany the annual report of the Chief of Engineers.[1]

Payments for actual expenses of operation and repair authorized.

Use of canals, etc., to be regulated by Secretary of War.

Sec. 4, Aug. 17, 1894, v. 28, p. 362.

1112. It shall be the duty of the Secretary of War to prescribe such rules and regulations for the use, administration, and navigation of any or all canals and similar works of navigation that now are, or that hereafter may be, owned, operated, or maintained by the United States as in his judgment the public necessity may require.[2]

Regulations to be posted.

1113. Such rules and regulations shall be posted, in conspicuous and appropriate places, for the information of the public; and every person and every corporation which shall knowingly and willfully violate such rules and regulations shall be deemed guilty of a misdemeanor and, on conviction thereof in any district court in the United States within whose territorial jurisdiction such offense may have been committed, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment (in the case of a natural person) not exceeding six months, in the discretion of the court.[1] *Sec. 4, act of August 17, 1894 (28 Stat. L., 362).*

---

[1] The indefinite appropriation made by section 4 of the act of July 5, 1884 (23 Stat. L., 147), is not applicable to river and harbor improvements generally, but only to a particular class of public works, such as canals, locks, etc., in the use of which both operating expenses and expenses for repairs are necessarily incurred. XVIII Opin. Att. Gen., 188.

The effect of this statute is to repeal so much of sections 5245, 5247, 5249, and 5255, Revised Statutes, as authorizes the imposition of tolls or other charges for the use of canals or other works of river and harbor improvement erected at the expense of the United States. Section 5255 vested the management of the Louisville and Portland Canal in the Secretary of the Treasury at reduced rates of toll. The tolls were still further reduced by the act of May 11, 1874 (18 Stat. L., 43), and the control of the canal transferred to the Secretary of War, who, by the act of July 5, 1884 (23 Stat. L., 148), was given authority to make, post, and enforce regulations for the use of the canal, and this legislation was repeated in the act of September 30, 1888 (25 Stat. L., 497). The acts of May 18, 1880 (21 Stat. L., 141), and August 2, 1882 (22 Stat. L., 209), contained a provision that no tolls or operating charges should be levied upon or collected from vessels, dredges, or other water craft passing through any canal or other improvement of navigation belonging to the United States.

[2] Section 7 of the act of July 5, 1884 (23 Stat. L., 148), authorized the Secretary of War to prescribe rules and regulations for the use and administration of the Des Moines Rapids Canal, the Saint Marys Falls Canal, and the Louisville and Portland Canal. Section 14 of the act of September 19, 1890 (27 Stat. L., 455), provides that the dry dock constructed at the Des Moines Rapids Canal shall constitute an integrant part of the said canal, and makes the provisions of section 7, above cited, applicable to the same. See also Dig. Opin. J. A. G., 534, par. 17.

BRIDGES, ETC., OVER THE NAVIGABLE WATERS OF THE UNITED STATES.

Par.
1114. Bridges, dams, etc.
1115. Obstructions to navigation by bridges, piers, etc.
1116. Drawbridges.
1117. The same, regulations for operation.

Bridges, dams, etc.
March 3, 1899, s. 9, v. 30, p. 1150.

1114. It shall not be lawful to construct or commence the construction of any bridge, dam, dike, or causeway over or in any port, roadstead, haven, harbor, canal, navigable river, or other navigable water of the United States until the consent of Congress to the building of such structures shall have been obtained and until the plans for the same shall have been submitted to and approved by the Chief of Engineers and by the Secretary of War: *Provided*, That such structures may be built under authority of the legislature of a State across rivers and other waterways the navigable portions of which lie wholly within the limits of a single State, provided the location and plans thereof are submitted to and approved by the Chief of Engineers and by the Secretary of War before construction is commenced: *And provided further*, That when plans for any bridge or other structure have been approved by the Chief of Engineers and by the Secretary of War, it shall not be lawful to deviate from such plans either before or after completion of the structure unless the modification of said plans has previously been submitted to and received the approval of the Chief of Engineers and of the Secretary of War.[1] *Sec. 9, act of March 3, 1899 (30 Stat. L., 1150.)*

---

[1] In view of the decision of the Supreme Court in the case of the United States *v.* Eaton (144 U. S., 677), it may be doubted whether regulations prepared in conformity to this statute can have the penal character which it undertakes to confer. It was held in that case that "regulations prescribed by the President and by heads of Departments, under authority of Congress, may be regulations prescribed by law so as to lawfully support acts done under them and in accordance with them; but it does not follow that a thing required by them is a thing so required by law as to make a neglect to do the thing a criminal offense in a citizen, where a statute does not distinctly make the neglect in question a criminal offense." U. S. *v.* Eaton, 144 U. S., 88; Caha *v.* U. S., 152 U. S., 212, 220. It is a principle of the criminal law that an offense which may be the subject of criminal procedure is an act "committed or omitted in violation of a public law, either forbidding or commanding it." U. S. *v.* Eaton, 144 U. S., 87; IV American and English Cyclcpedia of Law, 642; IV Blackstone Com., 5. In Morrill *v.* Jones (106 U. S., 466), it was held that the Secretary of the Treasury could not alter or amend a statute by executive regulation; "much more does this principle apply to a case where it is sought substantially to prescribe a criminal offense by the regulation of a Department." That Congress can not delegate legislative power to the President is a principle universally recognized as vital to the integrity and maintenance of the system of government. Field *v.* Clark, 143 U. S., 649. The enforcement of the law may be made to depend upon a condition to be ascertained by an executive officer, but such an exception to the uniform operation of the laws is not a grant of legislative power. Dunlap *v.* U. S., 33 C. Cls. R., 135. For an opinion to the contrary of that above expressed, however, see U. S. *v.* Ormsbee, 74 Fed. Rep., 207.

Obstruction of waterways by bridges, etc. Mar. 3, 1899, s. 18, v. 30, p. 1153.

1115. Whenever the Secretary of War shall have good reason to believe that any railroad or other bridge now constructed, or which may hereafter be constructed, over

---

[1] For enforcement clause see section 17, act of March 3, 1899, paragraph 1132, *post.* The power of Congress to legislate for the prevention and removal of physical obstructions to navigation in public rivers in general, (*a*) having been allowed to lie dormant for nearly a century, began to be exercised in section 8 of the act of July 5, 1884, followed by the more explicit legislation on the subject of sections 9 and 10 of the act of August 11, 1888; such power having been previously left to be exercised by the States. (*b*) But these acts, in providing for the removal of obstructions to navigation caused by *bridges*, by requiring their alteration, etc., do not empower the Secretary of War to resort to military force to effect the purpose. They leave the execution of their provisions to the law officers and the courts. They make it the duty of the Secretary of War, whenever the owners or responsible parties, after having been notified to do so, neglect to so alter a bridge as to abate the obstruction, to apprize the Attorney-General, who is thereupon required to initiate the proceedings specified in the statute. (*c*) Dig. Opin. J. A. G., par. 613.

The power thus assumed by Congress is more fully exercised in sections 4, 5, and 7 of the act of September 19, 1890.

A distinctive feature of this act is that it in effect precludes States from authorizing the construction of bridges over navigable waters which are not wholly within their territorial limits, and provides that it shall not be lawful to commence the construction of a bridge over navigable water of the United States under any act of a State legislature "until the location and plan of such bridge" has "been submitted to and approved by the Chief of Engineers and by the Secretary of War." *Held*, under this provision, that the authority of a State for the erection ot a bridge over navigable water within the State must be shown as a condition precedent to the approval by the Secretary of War. Ibid.

Section 7 of the act of September 19, 1890 (reenacted in section 3, act of July 13, 1892), clearly shows that Congress did not intend to vest the Secretary of War with discretion to approve the plans of any bridge proposed to be constructed by State authority, except where such bridge was to be over navigable water lying wholly within the State. And *held* that the fact that the title to the soil under the water was vested in a municipality of the State did not affect the power of the State to grant the necessary authority. The title is distinct from the right of conservation. Though the title be vested in a town, there exists in the State, by reason of its sovereignty, "*a jus publicum* of passage and repassage, with consequent power of conservation," under (*d*) which it may concede the authority required by the statute. Ibid., p. 199, par. 3.

Section 7 of the act of 1890, in leaving the matter of the authorization and construction of bridges over navigable waters wholly within States entirely to the jurisdiction of the State, except in so far as to require the approval by the Chief of Engineers and by the Secretary of War of the location and plan of the bridge, indicates that Congress did not desire to exercise any further control over the subject. So, upon an application for the approval by the Secretary of War of the plans of a bridge over the Harlem River which is wholly within the State of New York, *held* that the fact of the unusual importance of this stream, and of its immediate connections with great interstate waterways and the sea, did not except it from the jurisdiction of the State under the statute or make necessary any special or additional legislation by Congress for the authorization or control of its system of bridges. Ibid., par. 616.

---

[a] As to the constitutionality of the exercise of this power by Congress, see Miller *v.* Mayor of New York, 109 U. S., 393-394.

[b] See Willamette Iron Bridge Co. *v.* Hatch, 125 U. S., 1.

[c] See U. S. *v.* Rider, 50 Fed., 406, where it was held (by Sage, U. S. Dist. J.) that the act of 1888, s. 9 and 10, was unconstitutional in delegating to the Secretary of War "powers exclusively vested in Congress." It is to be regretted that this, being a criminal case, could not have been appealed to the Supreme Court.

[d] VI Opin. Atty. Gen., 178.

any of the navigable waterways of the United States is an unreasonable obstruction to the free navigation of such waters on account of insufficient height, width of span, or otherwise, or where there is difficulty in passing the draw opening or the draw span of such bridge by rafts, steamboats, or other water craft, it shall be the duty of the said Secretary, first giving the parties reasonable opportunity to be heard, to give notice to the persons or corporations owning or controlling such bridge so to alter the same as to render navigation through or under it reasonably free, easy, and unobstructed; and in giving such notice he shall specify the changes recommended by the Chief of Engineers that are required to be made, and shall prescribe in each case a reasonable time in which to make them. If at the end of such time the alteration has not been made, the Secretary of War shall forthwith notify the United States district attorney for the district in which such bridge is situated, to the end that the criminal proceedings hereinafter mentioned may be taken. If the persons, corporation, or association owning or controlling any railroad or other bridge shall, after receiving notice to that effect, as hereinbefore required, from the Secretary of War, and within the time prescribed by him, willfully fail or refuse to remove the same or to comply with the lawful order of the Secretary of War in the premises, such persons, corporation, or association shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding five thousand dollars, and every month such persons, corporation, or association shall remain in default in respect to the removal or alteration of such bridge shall be deemed a new offense, and subject the persons, corporation, or association so offending to the penalties above prescribed: *Provided*, That in any case arising under the provisions of this section an appeal or writ of error may be taken from the district courts or from the existing circuit courts direct to the Supreme Court either by the United States or by the defendants.[1] *Sec. 18, act of March 3, 1899 (30 Stat. L., 1153).*

---

[1] This section replaces sections 4 and 5 of the act of September 19, 1890 (26 Stat. L., 453), *in pari materia.* In the case of the United States *v.* The City of Moline (82 Fed. Rep., 592), decided by the United States district court for the northern district of Illinois in 1897, it was held that section 4 of the act of September 19, 1890, was not unconstitutional; see also Rider *v.* U. S., 178 U. S., 251, and Lake Shore R. R. Co. *v.* Ohio, 165 U. S., 165.

The power of Congress to regulate bridges over navigable waters is paramount, and where it comes into conflict with that of a State, the latter necessarily becomes ineffective. Yet, until Congress acts, and by appropriate legislation assumes control of the subject, the power of a State over bridges across navigable waters is plenary. Case of Railroad Bridge at St. Paul, Minn., XVIII Opin. Atty. Gen., 164; Wilson *v.*

Drawbridges. Regulations for use.
Sec. 5, Aug. 17, 1894, v. 28, p. 362.

1116. It shall be the duty of all persons owning, operating, and tending the drawbridges now built, or which may hereafter be built across the navigable rivers and other waters of the United States, to open, or cause to be opened, the draws of such bridges under such rules and regulations as in the opinion of the Secretary of War the public interests require to govern the opening of drawbridges for the passage of vessels and other water-crafts, and such rules and regulations, when so made and published, shall have the force of law. Every such person who shall willfully fail or refuse to open, or cause to be opened, the draw of any such bridge for the passage of a boat or boats, or who shall unreasonably delay the opening of said draw after reasonable signal shall have been given, as provided in such regulations, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than two thousand dollars nor less than one thousand dollars, or by imprisonment (in the case of a natural person) for not exceeding one year, or by both such fine and imprisonment, in the discretion of the court: *Provided*, That the proper action to enforce the provisions of this section may be commenced before any commissioner, judge, or court of the United States, and such commissioner, judge, or court shall proceed in respect thereto as authorized by law in case of crimes against the United States.[1] *Sec. 5, act of August 17, 1894 (28 Stat. L., 362).*

The Blackbird Marsh Co., 2 Peters, 250; Gilman *v.* Philadelphia, 3 Wallace, 713; Pound *v.* Turck, 95 U. S., 459; Escanaba Co. *v.* Chicago, 107 U. S., 678; Bridge Co. *v.* U. S., 105 U. S., 470; Miller *v.* The Mayor, 109 U. S., 385; Gloucester Ferry Co. *v.* Pennsylvania, 114 U. S., 196; Luxton *v.* North River Bridge Co., 153 U. S., 525.

By the act of February 19, 1869 (15 Stat. L., 272), the construction of a drawbridge over the Connecticut River at Middletown, Conn., was authorized by Congress. The State statute authorizing the construction of the bridge, of which the act above referred to was in the nature of a confirmation and approval by Congress, required draws "not less than 130 feet in width in the clear," and the bridge was to be located and constructed in such manner and according to such plans as should be approved by a board of engineers to be appointed by the superior court. The bridge was built accordingly under the supervision and with the approval of a board of engineers of which two of the members were Generals McClellan and Gillmore. The draw space was 130 feet wide in the clear between the abutments down to the level of low water; below that, the riprap, sloping outward from the piers, diminished the clear space toward the bottom of the river. *Held*, that the contemporaneous construction of the act as requiring the full width down to the level of low water only, the projection of the riprap foundation below being approved by the board of engineers and confirmed by the court, was neither unreasonable nor so plainly contrary to the requirements of the act or the public needs as to render the bridge, approved as above, an unlawful structure. Gildersleeve et al. *v.* The New York, New Haven and Hartford R. R. Co., 82 Fed. Rep., 763; St. Louis and St. Paul Packet Co. *v.* Keokuk and H. Bridge Co., 31 Fed. Rep., 755; Hannibal and St. Joseph R. R. Co. *v.* Missouri River Packet Co., 125 U. S., 260.

[1] When a bridge over a navigable river is authorized by a State legislature, reserving a right to require a draw in the bridge on a certain contingency, Congress, on

Regulations for the operation of drawbridges. Sec. 5. *ibid*,

1117. Whenever, in the opinion of the Secretary of War, the public interests require it, he may make rules and regulations to govern the opening of drawbridges for the passage of vessels and other water-crafts, and such rules and regulations, when so made and published, shall have the force of law, and any violation thereof shall be punished as hereinbefore provided.[1] *Ibid.*

HARBOR LINES.

Par.
1118. Establishment of harbor lines.
1119. Permits for extensions, etc.
Par.
1120. Restriction on dredging.
1121. Harbor lines in District of Columbia.

Establishment of harbor lines. Mar. 3, 1899, s. 11, v. 30, p. 1151.

1118. Where it is made manifest to the Secretary of War that the establishment of harbor lines is essential to the preservation of and protection of harbors he may, and is hereby, authorized to cause such lines to be established, beyond which no piers, wharves, bulkheads, or other works shall be extended or deposits made, except under such regulations as may be prescribed from time to time by him.[2] *Sec. 11, act of March 3, 1899 (30 Stat. L., 1151).*

Permits for extensions, etc.

1119. Whenever the Secretary of War grants to any person or persons permission to extend piers, wharves, bulkheads, or other works, or to make deposits in any tidal harbor or river of the United States beyond any harbor lines established under authority of the United States, he shall cause to be ascertained the amount of tide water displaced by any such structure, or by any such deposits, and he shall, if he deem it necessary, require the parties to whom the permission is given to make compensation for such displacement either by excavating in some part of the harbor, including tide-water channels between high and low water mark, to such extent as to create a basin for as much tide water as may be displaced by such struc-

Ibid.

---

assuming control of the river, may require the construction of a draw in the bridge upon the happening of such a contingency, without providing for compensation to the bridge owners. U. S. *v.* City of Moline, 82 Fed. Rep., 592. As every bridge constructed over the navigable waters of the United States constitutes an obstruction to the free navigation thereof, and as the Congress is, by the Constitution, made the exclusive judge of the extent and amount of the obstruction that shall be authorized in any case, that body reserves to itself the right to authorize the construction of bridges over such waters. The nearest approach to general legislation on this subject will be found in the act of February 14, 1883 (22 Stat. L., 414), authorizing the construction of bridges across the Ohio River.

[1] The fact that States on either side of a navigable river have in force statutes prohibiting the doing of certain kinds of work on Sunday does not relieve the owner of a bridge spanning the river from the duty of opening the draw on Sunday to admit the passage of vessels engaged in commerce on the river. Boland *v.* Combination Bridge Co., 94 Fed. Rep., 888. See also note 1 to paragraph 1115, *ante*.

[2] This section replaces section 12 of the act of September 19, 1890 (26 Stat. L., 455), in pari materia.

ture or by such deposits, or in any other mode that may be satisfactory to him.[1] *Ibid.*

Restriction on dredging. July 13, 1892, s. 5, v. 27, p. 111.

1120. No money appropriated for the improvement of rivers and harbors in this act or hereafter shall be expended for dredging inside of harbor lines duly established. *Sec. 5, act of July 13, 1892 (27 Stat. L., 111).*

Harbor lines established. Mar. 3, 1899, s. 3, v. 30, p. 1378.

1121. The harbor lines of the District of Columbia shall be determined by the Chief of Engineers, United States Army, and the Commissioners of the District of Columbia, subject to the approval of the Secretary of War. *Sec. 3, act of March 3, 1899 (30 Stat. L., 1378).*

INJURIES TO GOVERNMENT WORKS.

OBSTRUCTIONS TO NAVIGATION.

Par.
1122. Obstructions to navigation.
1123. Penal clauses.
1124. Deposits in navigable waters.
1125. Use of public works, permits.
1126. Anchoring vessels, etc.
1127. Penal clauses.

Par.
1128. Floating loose timber and logs.
1129. The same, regulations for floating.
1130. Right to amend.
1131. Civil actions not affected.
1132. Department of Justice to conduct proceedings.

Obstructions to navigation.

March 3, 1899, s. 10, v. 30., p. 1151.

1122. The creation of any obstruction not affirmatively authorized by Congress to the navigable capacity of any of the waters of the United States is hereby prohibited, and it shall not be lawful to build or commence the building of any wharf, pier, dolphin, boom, weir, breakwater, bulkhead, jetty, or other structures in any port, roadstead, haven, harbor, canal, navigable river, or other water of the United States outside established harbor lines, or where no harbor lines have been established, except on plans recommended by the Chief of Engineers and authorized by the Secretary of War; and it shall not be lawful to excavate or fill or in any manner to alter or modify the course, location, condition, or capacity of any port, roadstead, haven, harbor, canal, lake, harbor of refuge, or inclosure within the limits of any breakwater, or of the channel of any navigable water of the United States, unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of War prior to beginning the same.[1] *Sec. 10, act of March 3, 1899 (30 Stat. L., 1151).*

---

[1] For penalty for violations of this section see section 12 of the act of March 3, 1899 (30 Stat. L., 1151), paragraph 1123, *post.* This section replaces section 9, act of August 17, 1894 (28 Stat. L., 364). Section 17 of the act of March 3, 1899 (30 ibid., 1153), contains the requirement that the Department of Justice shall conduct the legal proceedings necessary to the enforcement of the provisions of sections 9 to 16, inclusive, of that enactment.

Penal clauses. Sec. 12, *ibid.*

1123. Every person and every corporation that shall violate any of the provisions of sections nine, ten, and eleven of this act shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding twenty-five hundred dollars nor less than five hundred dollars, or by imprisonment (in the case of a natural person) not exceeding one year, or by both such punishments, in the discretion of the court. And, further, the removal of any such structures or parts of structures erected in violation of the provisions of the said sections may be enforced by the injunction of any circuit court exercising jurisdiction in any district in which such structures may exist, and proper proceedings to this end may be instituted under the direction of the Attorney-General of the United States.[2] *Sec. 12, act of March 3, 1899 (30 Stat. L., 1151).*

Deposits in navigable waters. March 3, 1899, s. 13, v. 30, p. 1152.

1124. It shall not be lawful to throw, discharge, or deposit, or cause, suffer, or procure to be thrown, discharged, or deposited either from or out of any ship, barge, or other floating craft of any kind, or from the shore, wharf, manufacturing establishment, or mill of any kind, any refuse matter of any kind or description whatever other than that flowing from streets and sewers and passing therefrom in a liquid state, into any navigable water of the United States, or into any tributary of any navigable water from which the same shall float or be washed into such navigable water; and it shall not be lawful to deposit, or cause, suffer, or procure to be deposited material of any kind in any place on the bank of any navigable water, or on the bank of any tributary of any navigable water, where the same shall be liable to be washed into such navigable water, either by ordinary or high tides, or by storms or floods, or otherwise, whereby navigation shall or may be impeded or obstructed: *Provided*, That nothing herein contained shall extend to, apply to, or prohibit the operations in connection with the improvement of navigable waters or construction of public works, considered necessary and proper by the United States officers supervising such improvement or public work: *And provided further*, That the Secretary of War, whenever in the judgment of the Chief of Engineers anchorage and navigation will not be injured thereby, may permit the deposit of any material above mentioned in navigable waters, within limits to be defined and under conditions to be prescribed by him, provided application is made to him prior to depositing such material; and whenever any permit is so granted the conditions thereof shall be strictly complied with, and any violation thereof shall be unlawful.[1] *Sec. 13, act of March 3, 1899 (30 Stat. L., 1152).*

---

[1] This section replaces section 9 of the act of September 19, 1890 (26 Stat. L., 454), and section 3 of the act of July 13, 1892 (27 ibid., 110), *in pari materia.* In the case of Leovy *v.* U. S., it was decided by the circuit court of appeals for the fifth circuit, in February, 1899, that the replaced section of the act of July 13, 1892, was constitutional, and that a State had no authority, under its police power, to close any navigable water of the United States, though located wholly within the limits of the State, for the purpose of reclamation of swamp lands, without the consent of the Federal Government. Leovy *v.* U. S., 92 Fed. Rep., 344. When Congress has assumed jurisdiction over a navigable river lying wholly within one State, Congress has power to order obstructions to navigation removed, even though their construction was authorized by the State. U. S. *v.* City of Moline, 82 Fed. Rep., 592. But the right of Congress to remove the obstruction does not, of itself, exempt the Government of the United States from the duty of making just compensation for such property rights as are taken. Monongahela Nav. Co. *v.* U. S., 148 U. S., 622.

Wharves are a peculiar kind of property, which, though standing on terra firma, are so far marine in their uses and purposes as to come within admiralty jurisdiction. In England it is generally held that they extend to the low-water mark. In this country, with the extending of admiralty jurisdiction to our inland seas and navigable rivers, it has been held that they may extend to the point of navigability. The owner has not an unlimited property in them. If the wharf be not reserved for his actual use, or of some one acquiring the right under him, it is open to the public, and any vessel may make fast to and use it. Neither can the owner charge an unreasonable price for wharfage. Clifford *v.* U. S., 34 Court of Claims, 223, 230; The Genesee Chief, 12 Howard, 443; Dutton *v.* Strong, 1 Black, 1; Cannon *v.* New Orleans, 20 Wallace, 577; Ex parte Easton, 95 U. S., 8; Packet Co. *v.* Keokuk, ibid, 80; Packet Co. *v.* St. Louis, 100 U. S., 423.

[2] See note to paragraph 1119, *ante;* see also paragraph 1132, *post.*

Use of public works, etc.
Sec. 14, *ibid.*

1125. It shall not be lawful for any person or persons to take possession of or make use of for any purpose, or build upon, alter, deface, destroy, move, injure, obstruct by fastening vessels thereto or otherwise, or in any manner whatever impair the usefulness of any sea wall, bulkhead, jetty, dike, levee, wharf, pier, or other work built by the United States, or any piece of plant, floating or otherwise, used in the construction of such work under the control of the United States, in whole or in part, for the preservation and improvement of any of its navigable waters or to prevent floods, or as boundary marks, tide gauges, surveying stations, buoys, or other established marks, nor remove for ballast or other purposes any stone or other material composing such works: *Provided*, That the Secretary of War may, on the recommendation of the Chief of Engineers, grant permission for the temporary occupation or use of any of the aforementioned public works when in his judgment such occupation or use will not be injurious to the public interest.[1] *Sec. 14, ibid.*

---

[1] This section replaces section 6 of the act of September 19, 1890 (26 Stat. L., 426), *in pari materia.*

Anchoring vessels, etc. Sec. 15, *ibid.*

1126. It shall not be lawful to tie up or anchor vessels or other craft in navigable channels in such a manner as to prevent or obstruct the passage of other vessels or craft; or to voluntarily or carelessly sink, or permit or cause to be sunk, vessels or other craft in navigable channels; or to float loose timber and logs, or to float what is known as sack rafts of timber and logs in streams or channels actually navigated by steamboats in such manner as to obstruct, impede, or endanger navigation. And whenever a vessel, raft, or other craft is wrecked and sunk in a navigable channel, accidentally or otherwise, it shall be the duty of the owner of such sunken craft to immediately mark it with a buoy or beacon during the day and a lighted lantern at night, and to maintain such marks until the sunken craft is removed or abandoned, and the neglect or failure of the said owner so to do shall be unlawful; and it shall be the duty of the owner of such sunken craft to commence the immediate removal of the same, and prosecute such removal diligently, and failure to do so shall be considered as an abandonment of such craft, and subject the same to removal by the United States as hereinafter provided for.[2] *Sec. 15, ibid.*

Penal clauses. Sec. 16, *ibid.*

1127. Every person and every corporation that shall violate, or that shall knowingly aid, abet, authorize, or instigate a violation of the provisions of sections thirteen, fourteen, and fifteen of this act shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding twenty-five hundred dollars nor less than five hundred dollars, or by imprisonment (in the case of a natural person) for not less than thirty days nor more than one year, or by both such fine and imprisonment, in the discretion of the court, one-half of said fine to be paid to the person or persons giving information which shall lead to conviction. And any and every master, pilot, and engineer, or person or persons acting in such capacity, respectively, on board of any boat or vessel who shall knowingly engage in towing any scow, boat, or vessel loaded with any material specified in section thirteen of this act to any point or place of deposit or discharge in any harbor or navigable water, elsewhere than within the limits defined and permitted by the Secretary of War, or who shall willfully injure or destroy any work of the United States contemplated in section fourteen of this act, or who shall willfully obstruct the channel of any waterway in the manner contemplated in section fifteen of this act, shall be deemed guilty of a violation of this act, and shall upon conviction be punished as hereinbefore provided in this section, and shall also have his license revoked or suspended for a term to be fixed by the judge before whom tried and convicted. And any boat, vessel, scow, raft, or other craft used or employed in violating any of the provisions of sections thirteen, fourteen, and fifteen of this act shall be liable for the pecuniary penalties specified in this section, and in addition thereto for the amount of the damages done by said boat, vessel, scow, raft, or other craft, which latter sum shall be placed to the credit of the appropriation for the improvement of the harbor or waterway in which the damage occurred, and said boat, vessel, scow, raft, or other craft may be proceeded against summarily by way of libel in any district court of the United States having jurisdiction thereof.[1] *Sec. 16, ibid.*

---

[1] This section replaces section 3 of the act of August 14, 1876 (19 ibid., 132, 139), and section 9 of the act of September 19, 1890 (26 Stat. L., 426). Section 9 of the act of March 3, 1899, contained a provision directing the Secretary of War "to cause to be prepared and reported to Congress a list of all piers, wharves, and other structures or property pertaining to river and harbor works belonging to the Government of the United States now occupied by private corporations or persons, together with the terms upon which such piers, wharves, or other property are occupied, and the date of the agreement or permission to occupy the same, and shall make such recommendations as he may deem desirable in connection therewith."

[2] The construction, without the authority of the Secretary of War, of *weirs* in a harbor, which is navigable water of the United States, outside of established harbor lines (or where there are no harbor lines established), is, under section 7, act of September 19, 1890, unlawful when the same will be detrimental to navigation. And whether or not the persons who constructed such weirs had any license from the town is immaterial. Dig. Opin. J. A. G., par. 1783.

The United States may avail itself of the remedy by injunction to protect from injury improvements in navigable waters made under the authority of Congress. XVII Opin. Att. Gen., 279; U. S. *v.* Duluth, 4 Dillon, 469.

Floating loose timber, logs, etc. May 9, 1900, v. 31, p. 172.

1128. The prohibition contained in section fifteen[2] of the river and harbor act approved March third, eighteen hundred and ninety-nine, against floating loose timber and logs, or sack rafts, so called, of timber and logs in streams or channels actually navigated by steamboats, shall not apply to any navigable river or waterway of the United States or any part thereof whereon the floating of loose timber and logs and sack rafts of timber and logs is the principal method of navigation. But such method of navigation on such river or waterway or part thereof shall be subject to the rules and regulations prescribed by the Secretary of War as hereinafter provided. *Act of May 9, 1900 (31 Stat. L., 172).*

---

[1] This section replaces section 10 of the act of September 19, 1890 (26 Stat. L., 454).

[2] Paragraph 1126, *ante.*

Regulations for floating logs, rafts, etc., to be made by Secretary of War.
Sec. 2, *ibid.*

1129. The Secretary of War shall have power, and he is hereby authorized and directed, within the shortest practicable time after the passage hereof, to prescribe rules and regulations, which he may at any time modify, to govern and regulate the floating of loose timber and logs, and sack rafts (so called) of timber and logs and other methods of navigation on the streams and waterways, or any thereof, of the character, as to navigation, in section one hereof described. The said rules and regulations shall be so framed as to equitably adjust conflicting interests between the different methods or forms of navigation; and the said rules and regulations shall be published at least once in such newspaper or newspapers of general circulation as in the opinion of the Secretary of War shall be best adapted to give notice of said rules and regulations to persons affected thereby and locally interested therein. And all modifications of said rules and regulations shall be similarly published. And such rules and regulations, when so prescribed and published as to any such stream or waterway, shall have the force of law, and any violation thereof shall be a misdemeanor, and every person convicted of such violation shall be punished by a fine of not exceeding two thousand five hundred dollars nor less than five hundred dollars, or by imprisonment (in case of a natural person) for not less than thirty days nor more than one year, or by both such fine and imprisonment, in the discretion of the court: *Provided*, That the proper action to enforce the provisions of this section may be commenced before any commissioner, judge, or court of the United States, and such commissioner, judge, or court shall proceed in respect thereto as authorized by law in the case of crimes or misdemeanors committed against the United States. *Sec. 2, ibid.*

Amendment.
Sec. 3, *ibid.*

1130. The right to alter, amend, or repeal this act at any time is hereby reserved. *Sec. 3, ibid.*

Civil actions not affected.
Sec. 4, *ibid.*

1131. This act shall not, nor shall any rules or regulations prescribed thereunder, in any manner affect any civil action or actions heretofore commenced and now pending to recover damages claimed to have been sustained by reason of the violation of any of the terms of said section fifteen, as originally enacted, or in violation of any other law.[1] *Sec. 4, ibid.*

---

[1] The act of March 3, 1899 (30 Stat. L., 1155), contains a similar requirement.

Department of Justice to conduct legal proceedings.
Mar. 3, 1899, s. 17, v. 30, p. 1153.

1132. The Department of Justice shall conduct the legal proceedings necessary to enforce the foregoing provisions of sections nine to sixteen, inclusive, of this act; and it shall be the duty of district attorneys of the United States to vigorously prosecute all offenders against the same whenever requested to do so by the Secretary of War or by any of the officials hereinafter designated, and it shall furthermore be the duty of said district attorneys to report to the Attorney-General of the United States the action taken by him against offenders so reported, and a transscript of such reports shall be transmitted to the Secretary of War by the Attorney-General; and for the better enforcement of the said provisions and to facilitate the detection and bringing to punishment of such offenders, the officers and agents of the United States in charge of river and harbor improvements, and the assistant engineers and inspectors employed under them by authority of the Secretary of War, and the United States collectors of customs and other revenue officers, shall have power and authority to swear out process and to arrest and take into custody, with or without process, any person or persons who may commit any of the acts or offenses prohibited by the aforesaid sections of this act, or who may violate any of the provisions of the same: *Provided*, That no person shall be arrested without process for any offense not committed in the presence of some one of the aforesaid officials: *And provided further*, That whenever any arrest is made under the provisions of this act, the person so arrested shall be brought forthwith before a commissioner, judge, or court of the United States for examination of the offenses alleged against him; and such commissioner, judge, or court shall proceed in respect thereto as authorized by law in case of crimes against the United States. *Sec. 17. act of March 3, 1899 (30 Stat. L., 1153).*

OBSTRUCTION OF NAVIGATION BY SUNKEN VESSELS, ETC.

Par.	Par.
1132a. Sunken vessels, removal.	1133. Removal of wrecks, etc.; sale.

Sunken vessels, etc.
Mar. 3, 1899, s. 19, v. 30, p. 1154.

1132a. Whenever the navigation of any river, lake, harbor, sound, bay, canal, or other navigable waters of the United States shall be obstructed or endangered by any sunken vessel, boat, water craft, raft, or other similar obstruction, and such obstruction has existed for a longer period than thirty days, or whenever the abandonment of such obstruction can be legally established in a less space of time, the sunken vessel, boat, water craft, raft, or other obstruction shall be subject to be broken up, removed, sold, or otherwise disposed of by the Secretary of War at his discretion, without liability for any damage to the owners of the same: *Provided*, That in his discretion, the Secretary of War may cause reasonable notice of such obstruction of not less than thirty days, unless the legal abandonment of the obstruction can be established in a less time, to be given by publication, addressed "To whom it may concern," in a newspaper published nearest to the locality of the obstruction, requiring the removal thereof: *And provided also*, That the Secretary of War may, in his discretion, at or after the time of giving such notice, cause sealed proposals to be solicited by public advertisement, giving reasonable notice of not less than ten days, for the removal of such obstruction as soon as possible after the expiration of the above specified thirty days' notice, in case it has not in the meantime been so removed, these proposals and contracts, at his discretion, to be conditioned that such vessel, boat, water craft, raft, or other obstruction, and all cargo and property contained therein, shall become the property of the contractor, and the contract shall be awarded to the bidder making the proposition most advantageous to the United States: *Provided*, That such bidder shall give satisfactory security to execute the work: *Provided further*, That any money received from the sale of any such wreck, or from any contractor for the removal of wrecks, under this paragraph shall be covered into the Treasury of the United States.[1] *Sec. 19, act of March 3, 1899 (30 Stat. L., 1154).*

Removal of wrecks, etc. Sec. 20, *ibid.*

1133. Under emergency, in the case of any vessel, boat, water craft, or raft, or other similar obstruction, sinking or grounding, or being unnecessarily delayed in any Government canal or lock, or in any navigable waters mentioned in section nineteen, in such manner as to stop, seriously interfere with, or specially endanger navigation, in the opinion of the Secretary of War, or any agent of the United States to whom the Secretary may delegate proper authority, the Secretary of War or any such agent shall have the right to take immediate possession of such boat, vessel, or other water craft, or raft, so far as to remove or to destroy it and to clear immediately the canal, lock, or navigable waters aforesaid of the obstruction thereby caused, using his best judgment to prevent any unnecessary injury; and no one shall interfere with or prevent such removal or destruction: *Provided*, That the officer or agent charged with the removal or destruction of an obstruction under this section may in his discretion give notice in writing to the owners of any such obstruction requiring them to remove it: *And provided further*, That the expense of removing any such obstruction as aforesaid shall be a charge against such craft and cargo; and if the owners thereof fail or refuse to reimburse the United States for such expense within thirty days after notification, then the officer or agent aforesaid may sell the craft or cargo, or any part thereof that may not have been destroyed in removal, and the proceeds of such sale shall be covered into the Treasury of the United States. *Sec. 20, ibid.*

---

[1] Owners of a vessel who scuttle and sink her in a harbor while on fire, for the purpose of saving her rigging and spars, and abandoning her to the underwriters, may be compelled to remove the hull, as an obstruction to navigation, under section 10 of the act of September, 19, 1890. U. S. *v.* Hall, 63, Fed. Rep., 472.

Appropriation. Sec. 20, *ibid.*

Such sum of money as may be necessary to execute this section and the preceding section of this act is hereby appropriated out of any money in the Treasury not otherwise appropriated, to be paid out on the requisition of the Secretary of War.

All laws or parts of laws inconsistent with the foregoing sections ten to twenty, inclusive, of this act are hereby repealed: *Provided*, That no action begun, or right of action accrued, prior to the passage of this act shall be affected by this repeal. *Sec. 20, ibid.*

DEPOSITS IN NEW YORK HARBOR.

Par.
1134. Deposits in New York Harbor forbidden; penalty.
1135. Punishment of officer of boat.
1136. Supervisors to designate place of deposit; permits.
1137. Penalty for discharging elsewhere.
1138. Boats to carry name painted on stern.

Par.
1139. Inspectors.
1140. Bribery; penalty.
1141. Return of permits; penalty.
1142. Disposal of matter dredged.
1143. Supervisor of harbor.
1144. Fishing in ship channels forbidden.
1145. Penalties.
1146. Arrests.

New York Harbor; injurious deposits in, forbidden; penalty.
Sec. 3, Aug. 5, 1886, v. 24, p. 329; sec. 1, June 29, 1888, v. 25, p. 209.

1134. The placing, discharging, or depositing, by any process or in any manner, of refuse, dirt, ashes, cinders, mud, sand, dredgings, sludge, acid, or any other matter of any kind, other than that flowing from streets, sewers, and passing therefrom in a liquid state, in the tidal waters of the harbor of New York, or its adjacent or tributary waters, or in those of Long Island Sound, within the limits which shall be prescribed by the supervisor of the harbor, is hereby strictly forbidden, and every such act is made a misdemeanor, and every person engaged in or who shall aid, abet, authorize, or instigate a violation of this section, shall, upon conviction, be punishable by a fine or imprisonment, or both, such fine to be not less than two hundred and fifty dollars nor more than two thousand five hundred dollars, and the imprisonment to be not less than thirty days nor more than one year, either or both united, as the judge before whom conviction is obtained shall decide, one half of said fine to be paid to the person or persons giving information which shall lead to conviction of this misdemeanor.[1] *Sec. 1, act of June 29, 1888 (25 Stat. L., 209).*

Punishment of officer of boat.
Sec. 2, June 29, 1888, v. 25, p. 209.

1135. Any and every master and engineer, or person or persons acting in such capacity, respectively, on board of any boat or vessel, who shall knowingly engage in towing any scow, boat, or vessel loaded with any such prohibited matter to any point or place of deposit, or discharge in the waters of the harbor of New York, or in its adjacent or tributary waters, or in those of Long Island Sound, or to any point or place elsewhere than within the limits defined and permitted by the supervisor of the harbor hereinafter mentioned, shall be deemed guilty of a violation of this act, and shall, upon conviction, be punishable as hereinbefore provided for offenses in violation of section one of this act, and shall also have his license revoked or suspended for a term to be fixed by the judge before whom tried and convicted.[2] *Sec. 2, act of June 29, 1888 (25 Stat. L., 209).*

Supervisor to designate place of deposit.
Sec. 3, June 29, 1888, v. 25, p. 209; sec. 3, Aug. 17, 1894, v. 28, p. 360.

1136. In all cases of receiving on board of any scows or boats such forbidden matter or substance as herein described, the owner or master, or person acting in such capacity on board of such scows or boats, before proceeding to take or tow the same to the place of deposit, shall apply for and obtain from the supervisor of the harbor appointed hereunder a permit defining the precise limits within which the discharge of such scows or boats may be made; and it shall not be lawful for the owner or master, or person acting in such capacity, of any tug or towboat, to tow or move any scow or boat so loaded with such forbidden matter until such permit shall have been obtained; and every person violating the foregoing provisions of this section shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than one thousand nor less than five hundred dollars, and in addition thereto the master of any tug or towboat so offending shall have his license revoked or suspended for a term to be fixed by the judge before whom tried and convicted. *Sec. 3, act of August 17, 1894 (28 Stat. L., 360).*

---

[1] The Erie and Atlantic basins, in New York Harbor, are private property, but they are also navigable waters of the United States, and the owners of the soil under the water hold the title subject to the rights of the public to navigate such waters, and are therefore not empowered to fill in the basins and deprive the public of their use. Moreover they are waters over which the United States has expressly assumed jurisdiction, in prohibiting, by the act of June 29, 1888, the dumping of deposits "in the tidal waters of the harbor of New York, or its adjacent or tributary waters, within the limits which shall be prescribed by the supervisor of the harbor." *Held*, that the subsequent establishment, under section 12, of the act of August 11, 1888, of harbor lines in that harbor outside these basins did not oust this jurisdiction, but that the act of June 29, 1888, was still in force. Dig. Opin. J. A. G., par. 1786.

Held, that the prohibition, by section 6, act of September 19, 1890, of the dumping of ballast, could not legally be enforced in New York Harbor beyond the three-mile limit. Ibid., par. 1787. See also XX Opin. Att. Gen., 293.

[2] The act of June 29, 1888, 25 Stat. L., 209, as amended by the act of August 18, 1894 (28 Stat. L., 360), prohibiting the deposit of refuse in New York Harbor without a permit from the supervisor of the harbor, is a valid exercise of the police powers of Congress over navigation and commerce. U. S. *v.* Romard, 89 Fed. Rep., 156.

Permits.

Penalty.

Penalty for discharging elsewhere. *Ibid.*

1137. And any deviation from such dumping or discharging place specified in such permit shall be a misdemeanor, and the owner and master, or person acting in the capacity of master, of any scows or boats dumping or discharging such forbidden matter in any place other than that specified in such permit shall be liable to punishment therefor, as provided in section one of the said act of June twenty-ninth, eighteen hundred and eighty-eight; and the owner and master, or person acting in the capacity of master, of any tug or towboat towing such scows or boats shall be liable to equal punishment with the owner and master, or person acting in the capacity of master, of the scows or boats; and, further, every scowman or other employee on board of both scows and towboats shall be deemed to have knowledge of the place of dumping specified in such permit, and the owners and masters, or persons acting in the capacity of masters, shall be liable to punishment, as aforesaid, for any unlawful dumping, within the meaning of this act or of the said act of June twenty-ninth, eighteen hundred and eighty-eight, which may be caused by the negligence or ignorance of such scowman or other employee; and, further, neither defect in machinery nor avoidable accidents to scows or towboats, nor unfavorable weather, nor improper handling or moving of scows or boats of any kind whatsoever, shall operate to release the owners and masters and employees of scows and towboats from the penalties hereinbefore mentioned. *Ibid.*

Boats to carry name, etc., painted. *Ibid.*

1138. Every scow or boat engaged in the transportation of dredgings, earth, sand, mud, cellar dirt, garbage, or other offensive material of any description shall have its name or number and owner's name painted in letters and numbers at least fourteen inches long on both sides of the scow or boat; these names and numbers shall be kept distinctly legible at all times, and no scow or boat not so marked shall be used to transport or dump any such material. *Ibid.*

Inspectors.

Ibid.

1139. The supervisor of the harbor of New York, designated as provided in section five of the said act of June twenty-ninth, eighteen hundred and eighty-eight, is authorized and directed to appoint inspectors and deputy inspectors, and, for the purpose of enforcing the provisions of this act and of the act aforesaid, and of detecting and bringing to punishment offenders against the same, the said supervisor of the harbor, and the inspectors and deputy inspectors so appointed by him, shall have power and authority:

Duties. Arrests.

First. To arrest and take into custody, with or without process, any person or persons who may commit any of the acts or offenses prohibited by this section and by the act of June twenty-ninth, eighteen hundred and eighty-eight, aforesaid, or who may violate any of the provisions of the same: *Provided*, That no person shall be arrested without process for any offense not committed in the presence of the supervisor or his inspectors or deputy inspectors, or either of them: *And provided further*, That whenever any such arrest is made the person or persons so arrested shall be brought forthwith before a commissioner, judge, or court of the United States for examination of the offenses alleged against him; and such commissioner, judge, or court shall proceed in respect thereto as authorized by law in case of crimes against the United States.

Seizure of boats.

Second. To go on board of any scow or towboat engaged in unlawful dumping of prohibited material, or in moving the same without a permit as required in this section of this act, and to seize and hold said boats until they are discharged by action of the commissioner, judge, or court of the United States before whom the offending persons are brought.

Custody of witness.

Third. To arrest and take into custody any witness or witnesses to such unlawful dumping of prohibited material, the said witnesses to be released under proper bonds.

Accompanying towboats.

Fourth. To go on board of any towboat having in tow scows or boats loaded with such prohibited material, and accompany the same to the place of dumping, whenever such action appears to be necessary to secure compliance with the requirements of this act and of the act aforesaid.

Inspecting gas, etc., works.

Fifth. To enter gas and oil works and all other manufacturing works for the purpose of discovering the disposition made of sludge, acid, or other injurious material, whenever there is good reason to believe that such sludge, acid, or other injurious material is allowed to run into the tidal waters of the harbor in violation of section one of the aforesaid act of June twenty-ninth, eighteen hundred and eighty-eight. *Ibid.*

Bribery; penalty. *Ibid.*

1140. Every person who, directly or indirectly, gives any sum of money or other bribe, present, or reward, or makes any offer of the same to any inspector, deputy inspector, or other employee of the office of the supervisor of the harbor with intent to influence such inspector, deputy inspector, or other employee to permit or overlook any violation of the provisions of this section or of the said act of June twenty-ninth, eighteen hundred and eighty-eight, shall, on conviction thereof, be fined not less than five hundred dollars nor more than one thousand dollars, and be imprisoned not less than six months nor more than one year. *Ibid.*

Return of permits. *Ibid.*

1141. Every permit issued in accordance with the provisions of this section of this act which may not be taken up by an inspector or deputy inspector shall be returned within forty-eight hours after issuance to the office of the supervisor of the harbor; such permit shall bear an indorsement by the master of the towboat, or the person acting in such capacity, stating whether the permit has been used, and if so, the time and place of dumping. Any person violating the provisions of this section shall be liable to a fine of not more than five hundred dollars nor less than one hundred dollars. *Ibid.*

Penalty.

Disposal of matter dredged. Sec. 4, June 29, 1888, v. 25, p. 210.

1142. All mud, dirt, sand, dredgings, and material of every kind and description whatever taken, dredged, or excavated from any slip, basin, or shoal in the harbor of New York, or the waters adjacent or tributary thereto, and placed on any boat, scow, or vessel for the purpose of being taken or towed upon the waters of the harbor of New York to a place of deposit, shall be deposited and discharged at such place or within such limits as shall be defined and specified by the supervisor of the harbor, as in the third section of this act prescribed, and not otherwise. Every person, firm, or corporation being the owner of any slip, basin, or shoal, from which such mud, dirt, sand, dredgings, and material shall be taken, dredged, or excavated, and every person, firm, or corporation in any manner engaged in the work of dredging or excavating any such slip, basin, or shoal, or of removing such mud, dirt, sand, or dredgings therefrom, shall severally be responsible for the deposit and discharge of all such mud, dirt, sand, or dredgings at such place or within such limits so defined and prescribed by said supervisor of the harbor; and for every violation of the provisions of this section the person offending shall be guilty of an offense against this act, and shall be punished by a fine equal to the sum of five dollars for every cubic yard of mud, dirt, sand, dredgings, or material not deposited or discharged as required by this section. Any boat or vessel used or employed in violating any provision of this act shall be liable to the pecuniary penalties imposed thereby, and may be proceeded against summarily by way of libel in any district court of the United States having jurisdiction thereof.[1] *Sec. 4, act of June 29, 1888, (25 Stat. L., 210).*

Supervisor of the harbor.
Sec. 5, *ibid.*

1143. A line officer of the Navy shall be designated by the President of the United States as supervisor of the harbor, to act under the direction of the Secretary of War in enforcing the provisions of this act, and in detecting offenders against the same. This officer shall receive the sea pay of his grade, and shall have personal charge and supervision under the Secretary of War, and shall direct the patrol boats and other means to detect and bring to punishment offenders against the provisions of this act. *Sec. 5, ibid.*

Fishing, etc., in ship channels forbidden.
Sec. 2, Aug. 17, 1894, v. 28, p. 360.

1144. It shall be unlawful for any person or persons to engage in fishing or dredging for shell fish in any of the channels leading to and from the harbor of New York, or to interfere in any way with the safe navigation of those channels by ocean steamships and ships of deep draft.

Penalties.
Ibid.

1145. Any person or persons violating the foregoing provisions of this section shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by fine or imprisonment, or both, such fine to be not more than two hundred and fifty dollars nor less than fifty dollars, and the imprisonment to be not more than six months nor less than thirty days, either or both united, as the judge before whom conviction is obtained shall decide. *Ibid.*

---

[1] Where ashes are dumped, in an unlawful place, from the deck of an ocean steamer by her firemen, presumably acting under orders from some superior officer of the steamer, the steamer at the time being engaged in performing a freighting voyage to sea, and the dumping of ashes accumulated at her furnace being a necessary incident of her navigation, the statute takes effect and renders the steamer liable as having herself violated the law. The Bombay, 46 Fed. Rep., 665. See also case of the Anjer Head, 46 Fed. Rep., 664. See also Dig. Opin. J. A. G., par. 1787; and XX Opin. Att. Gen., 293.

Arrests.

1146. It shall be the duty of the United States supervisor of the harbor to enforce this act, and the deputy inspectors of the said supervisor shall have authority to arrest and take into custody, with or without process, any person or persons who may commit any of the acts or offenses prohibited by this act: *Provided*, That no person shall be arrested without process for any offense not committed in the presence of the supervisor or his inspector or deputy inspectors, or either of them: *And provided further*, That whenever any such arrest is made the person or persons so arrested shall be brought forthwith before a commissioner, judge, or court of the United States for examination of the offenses alleged against him; and such commissioner, judge, or court shall proceed in respect thereto as authorized by law in case of crimes against the United States. *Sec. 2, act of August 17, 1894 (28 Stat. L., 360).*

Process.

Proceedings.

HARBOR REGULATIONS FOR THE DISTRICT OF COLUMBIA.

Par.
1147. District Commissioners to prepare regulations.
1148. Unlawful deposits forbidden.
1149. Penalty.
1150. Limitation.

Harbor regulations for the District of Columbia. May 19, 1896, v. 29, p. 126.

1147. It shall be unlawful for any owner or occupant of any wharf or dock, any master or captain of any vessel, or any person or persons to cast, throw, drop, or deposit any ballast, dirt, oyster shells, or ashes in the water in any part of the Potomac River or its tributaries in the District of Columbia, or on the shores of said river below high-water mark, unless for the purpose of making a wharf, after permission has been obtained from the Commissioners of the District of Columbia for that purpose, which wharf shall be sufficiently inclosed and secured so as to prevent injury to navigation. *Act of May 19, 1896 (29 Stat. L., 126).*

Unlawful deposits forbidden. Sec. 2, *ibid.*

1148. It shall be unlawful for any owner or occupant of any wharf or dock, any captain or master of any vessel, or any other person or persons to cast, throw, deposit, or drop in any dock or in the waters of the Potomac River or its tributaries in the District of Columbia any dead fish, fish offal, dead animals of any kind, condemned oysters in the shell, watermelons, cantaloupes, vegetables, fruits, shavings, hay, straw, ice, snow, filth, or trash of any kind whatsoever. *Sec. 2, ibid.*

Penalty. Sec. 3, *ibid.*

1149. Any person or persons violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and on conviction thereof in the police court of the District of Columbia shall be punished by a fine not exceeding one hundred dollars or by imprisonment not exceeding six months, or by both such punishments, in the discretion of the court. *Sec. 3, ibid.*

Limitation. Sec. 4, *ibid.*

1150. Nothing in this act contained shall be construed to interfere with the work of improvement in or along the said river and harbor, under the supervision of the United States Government. *Sec. 4, ibid.*

Historical Note.—Legislative provision for the services of engineer officers with the Revolutionary armies was made at a relatively early stage in the progress of the war by a resolution of Congress of June 16, 1775, which authorized the employment of engineer officers at the headquarters of the Army and in the several departments. Col. R. Gridley was appointed Chief Engineer by General Washington, and his services were recognized and continued in that capacity by a resolution of Congress dated January 16, 1776. The difficulty of obtaining trained engineers in the Continental establishment made it necessary to secure such services abroad, and the action of the American commissioners in Paris, in employing several members of the French corps of engineers, was approved by Congress in a resolution dated July 8, 1777. A corps of engineers was subsequently established by the resolution of March 11, 1779, and M. Duportail, an officer of the Royal Engineers of France, was placed at its head, with the rank of brigadier-general. This corps continued in service until the close of the war, not having been disbanded until November, 1783.

A Corps of Artillerists and Engineers was established by the act of May 9, 1784 (1 Stat. L., 366). This organization was required to be "completed" by the act of March 3, 1795 (ibid., 430), and an additional regiment of artillerists and engineers was added to the establishment by the act of April 27, 1798 (ibid., 552). The seventeenth and eighteenth sections of the act of March 3, 1799 (ibid., 755), passed in contemplation of war with France, authorized the appointment of two engineers "distinct from the corps of artillerists and engineers," with the rank and pay of lieutenant-colonels, and conferred power upon the President, in his discretion, to appoint an inspector of fortifications, who was to have the rank of major and was to be selected from the artillerists and engineers, or from civil life. If he was appointed from the existing corps he was to retain his office and was to rise "therein in the same manner as if he had never been appointed to the said office of inspector."

The functions of the artillerists and engineers were dissociated by the act of March 6, 1802 (2 ibid., 132), which created a regiment of artillery and authorized the President to organize and establish a Corps of Engineers to consist of one major, two captains, two first lieutenants, two second lieutenants, and ten cadets; provision was made in the same enactment for the gradual expansion of the corps by a clause conferring authority upon the President to make promotions "without regard to rank" until the corps should consist of one colonel, one lieutenant-colonel, two majors, four captains, four first lieutenants, and four second lieutenants. By the act of April 29, 1812 (2 ibid., 720), two captains, two first lieutenants, two second lieutenants, "to be taken from the subaltern officer of engineers," and one paymaster and a company of bombardiers, sappers, and miners were added to the existing establishment. The composition of this corps was not changed by the acts of March 3, 1815 (3 ibid., 224), and April 4, 1818 (ibid., 426), for the reduction and reorganization of the staff, nor was its organization modified at the general reduction of March 2, 1821 (ibid., 615).

By section 2 of the act of July 5, 1838 (5 Stat. L., 256), a Corps of Topographical Engineers was established, and the President was authorized to increase the Corps of Engineers by the addition of one lieutenant-colonel, two majors, six captains, six first lieutenants, and six second lieutenants, and the pay of engineer officers was fixed at the rates established by law for officers of dragoons. By section 3 of the act of July 5, 1838, the paymaster authorized by the act of April 12, 1808, was transferred to the Pay Department. A second company of engineer soldiers was added to the corps by section 4 of the act of May 15 1846 (9 ibid., 12). By the act of March 3, 1851 (ibid., 62), the President was authorized to employ officers of engineers on lighthouse duty, and by section 8 of the act of August 31, 1852 (10 ibid., 119), officers of the corps were required to be attached to the Light-House Board as member and engineer secretary, respectively. By section 9 of the act of March 3, 1853 (ibid., 119), lieutenants of engineers, after fourteen years' continuous service, were to be entitled to the pay and allowances of captains. By section 3 of the act of August 5, 1861 (12 ibid., 287), three first lieutenants and three second lieutenants were added, and the organization of three additional companies of engineer soldiers was authorized by the act of August 6, 1861 (ibid., 317); two lieutenant-colonels and four majors were added to the strength of the corps, "by regular promotion." The Corps of Topographical Engineers was discontinued by the act of March 3, 1863 (ibid., 743), and its officers were merged in the Corps of Engineers. Examinations were also required, in all grades below that of field officer, as a condition precedent to promotion. The composition of the corps was fixed, by the same enactment, at one brigadier-general, four colonels, ten lieutenant-colonels, twenty majors, thirty captains, thirty first lieutenants, and ten second lieutenants. By section 19 of the act of July 28, 1866 (4 ibid., 333), the strength of the corps was fixed at one brigadier-general, six colonels, twelve lieutenant-colonels, twenty-four majors, thirty captains, twenty-six first lieutenants, and ten second lieutenants. By section 6, of the act of March 3, 1869 (15 ibid., 318), appointments and promotions in the several departments of the staff were suspended until otherwise directed by Congress. This requirement was removed, however, as to all officers below the grade of brigadier-general by the act of June 10, 1872 (17 ibid., 382), and repealed as to the Chief of Engineers by the act of June 30, 1879 (21 ibid., 45). By the act of July 5, 1898 (30 ibid., 652), the strength of the Corps of Engineers was fixed at one brigadier-general, seven colonels, fourteen lieutenant colonels, twenty-eight majors, thirty-five captains, thirty first lieutenants, and twelve second lieutenants.

By section 22 of the act of February 2, 1901 (31 Stat. L., 754), the permanent strength of the department was fixed at one Chief of Engineers with the rank of brigadier-general, seven colonels, fourteen lieutenant-colonels, twenty-eight majors, forty captains, forty first lieutenants, and thirty second lieutenants. The enlisted force was also increased by the addition of two battalions of engineer troops. It was also provided that the troops of the three engineer battalions and the officers of Engineers assigned to duty therewith should constitute a part of the line of the Army.

THE CORPS OF TOPOGRAPHICAL ENGINEERS.

The act of March 3, 1813 (2 Stat. L., 819), authorized the appointment of eight topographical engineers with the rank of major of cavalry and eight assistants with the rank of captain of infantry; but this force was reduced to two majors by the act of March 3, 1815 (ibid., 224). By the act of April 24, 1816 (ibid., 297), three majors and two assistants with the rank of captain were authorized for each division of the Army. On July 2, 1818, these officers were merged, by general orders, in the Corps of Engineers. In August, 1818, a topographical bureau was established in the War Department, the duties of the bureau being performed by officers detailed from the line. By the act of April 30, 1824 (4 ibid., 22), civil assistants were authorized to be employed, and on June 21, 1831, the Topographical Bureau was formally constituted, in general orders, as a separate office of the War Department.

The Corps of Topographical Engineers *eo nomine* was established by section 4 of the act of July 5, 1838 (5 Stat. L., 256), to consist of one colonel, one lieutenant-colonel, four majors, ten captains, ten first lieutenants, and ten second lieutenants, who were to be appointed by selection from the Corps of Engineers, from the line of the Army, and from the civil engineers authorized by the act of April 30, 1824. The corps as thus constituted was increased by section 2 of the act of August 5, 1861 (12 ibid., 287), by the addition of three first lieutenants and three second lieutenants, and, by the act of August 6, 1861 (ibid., 317), by the addition of two lieutenant-colonels, four majors, and one company of engineer soldiers. The corps was discontinued by the act of March 3, 1863 (9 Stat. L., 743), its officers being merged in the Corps of Engineers.

CHAPTER XXIII.

THE ORDNANCE DEPARTMENT[1]—THE BOARD OF ORDNANCE AND FORTIFICATION, ARMS, ARMORIES, AND ARSENALS.

Par.
1151. Organization.
1152, 1153. Appointments, promotions, examinations.
1154–1156. Details.
1157–1161. Miscellaneous requirements.
1162–1165. Ordnance sergeants, enlisted men.
1166–1168. Duties.
1169–1171. Purchases.
1172–1176. Accountability for property; regulations.

Par.
1177–1181. Sales.
1182–1184. Loans, gratuitous issues.
1185–1188. Board for testing rifled cannon.
1189. Miscellaneous purchases.
1190–1204. Arms, armories and arsenals.
1205–1208. The United States testing machine.
1209–1217. The Board of Ordnance and Fortification.

ORGANIZATION.

Composition. Feb. 8, 1815, v. 3, 203. June 23, 1874, s. 5, v. 18, p. 245. July 7, 1898, v. 30, p. 720. Feb. 2, 1901, s. 23, v. 31, p. 754.

1151. The Ordnance Department shall consist of one Chief of Ordnance with the rank of brigadier-general, four colonels, six lieutenant-colonels, twelve majors, twenty-four captains, and twenty-four first lieutenants, the ordnance storekeeper, and the enlisted men, including ordnance-sergeants, as now authorized by law. All vacancies created or caused by this section shall, as far as possible, be filled by promotion according to seniority as now prescribed by law. *Sec. 23, act of February 2, 1901 (31 Stat. L., 754).*

PROMOTIONS—EXAMINATIONS FOR PROMOTION.

Examinations, June 23, 1874, s. 5, v. 18, p. 245.

1152. No * * * promotion in said department shall hereafter be made until the officer or person so * * * promoted shall have passed a satisfactory examination before a board of ordnance officers senior to himself.[1] *Sec. 5, act of June 23, 1874 (18 Stat. L., 245); act of February 2, 1901 (31 ibid., 754).*

---

[1] For note containing a statutory history of the Ordnance Department see end of chapter.

Promotions. Feb. 2, 1901, s. 26, v. 31, p. 755.

1153. So long as there remain any officers holding permanent appointment in the * * * Ordnance Department * * * they shall be promoted according to seniority in the several grades, as now provided by law, and nothing herein contained shall be deemed to apply to vacancies which can be filled by such promotions or to the periods for which officers so promoted shall hold their appointments.[2] *Sec. 26, act of February 2, 1901 (31 Stat. L., 755).*

DETAILS.

Details. *Ibid.*

1154. When any vacancy, except that of the chief of the department or corps, shall occur, which can not be filled by promotion as provided for in this section, it shall be filled by detail from the line of the Army. *Ibid.*

The same; how made. *Ibid.*

1155. Such details shall be made from the grade in which the vacancies exist, under such system of examination as the President may from time to time prescribe.[3] *Ibid.*

The same; term. *Ibid.*

1156. All officers so detailed shall serve for a period of four years, at the end of which time they shall return to duty with the line, and officers below the rank of lieutenant-colonel shall not again be eligible for selection in any staff department until they have served two years with the line. *Ibid.*

MISCELLANEOUS REQUIREMENTS.

Pay of principal assistant to Chief of Ordnance. Feb. 27, 1877, v. 19, p. 243. Sec. 1279, R. S.

1157. The principal assistant in the Ordnance Bureau shall receive a compensation, including pay and emoluments, not exceeding that of a major of ordnance.

Rank of ordnance storekeepers.

1158. The ordnance storekeeper at Springfield armory shall have the rank of major of cavalry, and the ordnance storekeeper now on duty in Washington as disbursing officer and assistant to the Chief of Ordnance, United States Army, shall hereafter have the rank of major. All other ordnance storekeepers shall have the rank of captain of cavalry. *Act of June 6, 1896 (29 Stat. L., 260.)*[1]

---

[1] The system of examinations above prescribed now applies to such officers only as held commissions in the department on February 2, 1901; vacancies which may hereafter occur are required to be filled in accordance with the system of details prescribed in section 26 of the act of February 2, 1901. See, in this connection, the title *Details to the Staff* in the chapter entitled The Staff Departments.

Examinations for promotions in this department are now regulated by the acts of June 23, 1874 (18 Stat. L., 245), October 1, 1890 (26 ibid., 562), and July 27, 1892 (27 ibid., 276).

Vacancies in the lowest grade in the Ordnance Department are filled by the appointment of officers from the line of the Army who have passed a satisfactory examination of the kind prescribed in this section. The conditions of appointment and examination are set forth in paragraphs 1489 and 1490 of the Army Regulations of 1895.

[2] For enactment authorizing the promotion of lieutenants of ordnance to the grade of captain after fourteen years' service see paragraph 957, *ante;* for requirements in rsspect to examinations for promotion see the chapter entitled The Staff Departments.

[3] For statutory regulations respecting details in the several staff departments see the title *Details to the Staff* in the chapter entitled The Staff Department.

Mar. 2, 1867, c. 145, s. 7, v. 14, p. 423; Mar. 3, 1869, c. 124, s. 6, v. 15 p. 318; June 23 1874, c. 458, ss. 5, 8, v. 18, p. 245; June 6, 1896, v. 29, p. 260.
Sec. 1159, R. S.

Storekeepers may act as paymasters.
Sec. 1161, R. S.

1159. Any number, not exceeding six, of the ordnance storekeepers may be authorized to act as paymasters at armories and arsenals.[2]

Office of storekeeper discontinued.
Mar. 2, 1899, v. 30, p. 977; Feb. 2, 1901, v. 31, p. 748.

1160. When a vacancy shall occur through death, retirement, or other separation from active service, in the office of storekeeper in the Quartermaster's Department and Ordnance Department, respectively, now provided for by law, said offices shall cease to exist. *Act of March 2, 1899 (30 Stat. L., 977). February 2, 1901 (31 ibid., 748.)*

Assignments to corps and divisions.
July 7, 1898, v. 30, p. 720.

1161. A chief ordnance officer may be assigned to the staff of an army or a corps commander, and while so assigned shall have the rank, pay, and allowance of a lieutenant-colonel. A chief ordnance officer may be assigned to the staff of a division commander, and while so assigned shall have the rank, pay, and allowances of a major. *Act of July 7, 1898 (30 Stat. L., 720.)*

ORDNANCE-SERGEANTS—ENLISTED MEN.

Par.
1162. Ordnance-sergeants, duties.
1163. The same, selection.

Par.
1164. Enlisted men of ordnance.
1165. Detail of artificers.

Ordnance-sergeants; number and duty.
July 28, 1866, c. 299, s. 7, v. 14, p. 333; Apr. 5, 1832, c. 67, s. 2, v. 4, p. 504.
Sec. 1109, R. S.

1162. There shall be an ordnance-sergeant for each military post, whose duty it shall be to take care of the ordnance, arms, ammunition, and other military stores at such post, under the direction of the commanding officer, and according to regulations prescribed by the Secretary of War.[3]

How selected.
Apr. 5, 1832, c. 67, s. 2, v. 4, p. 504; Feb. 27, 1877, v. 19, p. 242.
Sec. 1110, R. S.

1163. Ordnance-sergeants shall be selected by the Secretary of War from the sergeants of the line who shall have served faithfully for eight years, including four years in the grade of noncommissioned officer, and shall be assigned to their stations by him.

---

[1] See the title *Examinations for Promotion* in the chapter entitled THE STAFF DEPARTMENTS.

[2] But one of these officers now remains in service; the office will cease to exist upon the occurrence of a vacancy under the operation of the act of Feb. 2, 1901. See par. 1160, *post.*

[3] For pay and allowances of ordnance-sergeants, see the chapters entitled THE PAY DEPARTMENT, THE QUARTERMASTER'S DEPARTMENT, and THE SUBSISTENCE DEPARTMENT.

The Army appropriation act of June 16, 1892, provided "that sergeants of ordnance shall receive the same allowances of clothing as other sergeants in like staff departments." *Held* that this provision entitled these sergeants to receive, free of cost, a certain number of units of the different articles that go to make up their clothing, or, when the allowance was expressed in dollars and cents, the amount which such articles would cost when made up in the form and style required for such sergeants. Dig. Opin. J. A. G., par. 1864.

Enlisted men of ordnance.
June 18, 1846, c. 29, s. 11, v. 9, p. 18; July 5, 1862, c. 133, s. 3, v. 12, p. 508; July 28, 1866, c. 299, s. 21, v. 14, p. 335; June 23, 1874, c. 458, s. 5, v. 18, p. 245; Feb. 27, 1877, c. 69, v. 19, p. 242.
Sec. 1162, R.S.

1164. The Chief of Ordnance may enlist as many sergeants of ordnance, corporals of ordnance, and first and second class privates of ordnance as the Secretary of War may direct.

Detail of artificers.
Feb. 8, 1815, c. 38, s. 4, v. 3, p. 203; Feb. 27, 1877, c. 69, v. 19, p. 242.
Sec. 1163, R.S.

1165. The Chief of Ordnance, subject to the approval of the Secretary of War, shall organize and detail to regiments, corps, or garrisons such numbers of ordnance enlisted men, furnished with proper tools, carriages, and apparatus, as may be necessary, and shall make regulations for their government.

DUTIES.

Par.
1166. Duties of Chief of Ordnance.
1167. Issues.

Par.
1168. Depots.

Duties of Chief of Ordnance.
Feb. 8, 1815, c. 38, s. 8, v. 3, p. 203.
Sec. 1164, R. S.

1166. It shall be the duty of the Chief of Ordnance to furnish estimates, and, under the direction of the Secretary of War, to make contracts and purchases, for procuring the necessary supplies of ordnance and ordnance stores for the use of the armies of the United States; to direct the inspection and proving of the same, and to direct the construction of all cannon and carriages, ammunition wagons, traveling forges, artificers' wagons, and of every implement and apparatus for ordnance, and the preparation of all kinds of ammunition and ordnance stores constructed or prepared for said service.[1]

Issues.
Feb. 8, 1815, c. 38, s. 5, v. 3, p. 203.
Sec. 1166, R. S.

1167. The Chief of Ordnance, or the senior officer of that corps for any district, shall execute all orders of the Secretary of War, and, in time of war, the orders of any general or field officer commanding an army, garrison, or detachment, for the supply of all ordnance and ordnance stores for garrison, field, or siege service.

Depots.
Feb. 8, 1815, c. 38, s. 9, v. 3, p. 204.
Sec. 1165, R. S.

1168. The Chief of Ordnance, under the direction of the Secretary of War, may establish depots of ordnance and ordnance stores in such parts of the United States and in such numbers as may be deemed necessary.[2]

---

[1] For powers and duties of this office in respect to the care and accountability of ordnance and ordnance stores, see paragraphs 1172–1176 *post*.

[2] CLERICAL SERVICES.

The employment of clerical services in the Ordnance Department is regulated in the annual acts of appropriation. The amount to be expended for such services was fixed at $65,000 by the acts of March 3, 1883, July 5, 1884, and March 3, 1885; at

PURCHASES.

Par.
1169. General purchases.
1170. Purchases of steel.
1171. Material for cartridge bags.

General purchases. Mar. 3, 1901, v. 31, p. 905.

1169. Hereafter, except in cases of emergency or where it is impracticable to secure competition, the purchase of all supplies for the use of the various departments and posts of the Army and of the branches of the army service shall only be made after advertisement, and shall be purchased where the same can be purchased the cheapest, quality and cost of transportation and the interests of the Government considered; but every open-market emergency purchase made in the manner common among business men which exceeds in amount two hundred dollars shall be reported for approval to the Secretary of War under such regulations as he may prescribe.[1] *Act of March 3, 1901 (31 Stat. L., 905).*

Purchases of steel. Feb. 24, 1891, v. 26, p. 769.

1170. No contract for the expenditure of any portion of the money herein provided, or that may be hereafter provided for the purchase of steel shall be made until the same shall have been submitted to public competition by the Department by advertisement. *Act of February 24, 1891*[2] *(26 Stat. L., 769).*

Material for cartridge bags. Mar. 15, 1898, v. 30, p. 326.

1171. When, in the opinion of the Secretary of War, it is necessary to purchase material abroad for the manufacture of sacks for artillery cartridges, it shall be admitted free of duty. *Act of March 15, 1898 (30 Stat. L., 326).*

$60,000 by the acts of June 30, 1886, February 9, 1887, September 22, 1888, March 2, 1889, June 13, 1890, February 24, 1891, July 16, 1892, February 27, 1893, August 6, 1894, February 12, 1895, March 16, 1896, March 2, 1897, and March 15, 1898. This restriction is suspended, during the existing war with Spain, by the act of June 7, 1898 (30 Stat. L., 434), and subsequent enactments of similar character.

[1] This enactment replaces the act of August 6, 1891 (28 Stat. L., 242), authorizing open-market purchases, not exceeding two hundred dollars in amount, in the manner common among business men. For general provisions respecting the procurement of supplies and services, see the chapters entitled CONTRACTS AND PURCHASES.

The act of June 7, 1898 (30 Stat. L., 434), contained the requirement that "during the existing war the Bureau of Ordnance of the War Department is authorized to purchase without advertisement such ordnance and ordnance stores as are needed for immediate use, and when such ordnance and ordnance stores are to be manufactured then to make contracts without advertisement for such stores to be delivered as rapidly as manufactured." By section 3 of the act of February 24, 1900 (31 Stat. L. 33), this authority was extended to June 30, 1901.

[2] The act of May 7, 1898 (30 Stat. L., 401), contains the requirement "that no contract for oil-tempered and annealed steel for high-power coast-defense guns and mortars shall be made at a price exceeding twenty-three cents per pound." The same statute confers authority upon the Secretary of War, at his discretion, to expend a portion of the money appropriated for oil-tempered and annealed steel for the purchase of material for steel-wire seacoast guns. The acts of March 3, 1899 (30 Stat. L., 1251), and May 25, 1900 (31 ibid., 184), contain similar requirements; those of March 3, 1899, and May 25, 1900, restricted the price to be paid for steel to twenty-two cents per pound.

ACCOUNTABILITY FOR PROPERTY.

Par.
1172. Reports of stores.
1173. Returns of ordnance.
1174. Regulations.
Par.
1175. Reports of damages.
1176. Cost of repairs.

Semiannual reports.
Feb. 8, 1815, c. 38, s. 8, v. 3, p. 204; Feb. 27, 1877, c. 69, v. 19, p. 242.
Sec. 1167, R. S.

1172. The Chief of Ordnance shall, half yearly, or oftener if so directed, make a report to the Secretary of War of all the officers and enlisted men in his department of the service, and of all ordnance and ordnance stores under his control.

Returns of ordnance.
Feb. 27, 1877, v. 19, p. 242.
Sec. 1167, R. S.

1173. Every officer of the Ordnance Department, every ordnance storekeeper, every post ordnance-sergeant, each keeper of magazines, arsenals, and armories, every assistant and deputy of such, and all other officers, agents, or persons who shall have received or may be entrusted with any stores or supplies, shall quarterly, or oftener if so directed, and in such manner and on such forms as may be directed or prescribed by the Chief of Ordnance, make true and correct returns to the Chief of Ordnance of all ordnance arms, ordnance stores, and all other supplies and property of every kind received by or entrusted to them and each of them, or which may in any manner come into their and each of their possession or charge. *Act of February 27, 1877 (19 Stat. L., 242).*

Regulations for returns.
Ibid.
Sec. 1167, R. S.

1174. The Chief of Ordnance, subject to the approval of the Secretary of War, is hereby authorized and directed to draw up and enforce in his department a system of rules and regulations for the government of the Ordnance Department, and of all persons in said department, and for the safe-keeping and preservation of all ordnance property of every kind, and to direct and prescribe the time, number, and forms of all returns and reports, and to enforce compliance therewith.[1] *Ibid.*

---

[1] For statutory provisions on the subject of property returns, see the act of March 29, 1894 (28 Stat. L., 42); see also the chapter entitled THE PUBLIC PROPERTY.

It is required, in general and comprehensive terms by section 1167, Revised Statutes, that *all officers*, persons, etc., who may be entrusted with any ordnance stores or supplies shall make certain regular returns to the Chief of Ordnance of such property in their possession or charge, according to certain forms and regulations to be prescribed by that officer with the approval of the Secretary of War. The act of March 3, 1879, authorizes and directs the Secretary of War, at the request of the head of any department, to issue arms and ammunition, when required for the protection of the public money and property, "to be delivered to any officer" of such department as may be designated by the head of the same, and to be accounted for to the Secretary of War. *Held* that the provision of section 1167 might properly be regarded as applying to the class of officers indicated in this act, who therefore would properly be required to furnish the returns prescribed by that section. Dig. Opin. J. A. G., par. 1861.

Reports of damages.
Feb. 8, 1815, c. 38, s. 7, v. 3, p. 204.
Sec. 1220, R.S.

1175. Every officer commanding a regiment, corps, garrison, or detachment shall make, once every two months, or oftener if so directed, a report to the Chief of Ordnance stating all damages to arms, equipments, and implements belonging to his command, noting those occasioned by negligence or abuse, and naming the officer or soldier by whose negligence or abuse the said damages were occasioned.

Cost of repairs to be deducted from pay of officer or soldier.
Sec. 1303, R.S.

1176. The cost of repairs or damages done to arms, equipments, or implements shall be deducted from the pay of any officer or soldier in whose care or use the same were when such damages occurred, if said damages were occasioned by the abuse or negligence of said officer or soldier.

SALES OF OBSOLETE AND UNSERVICEABLE MATERIAL.

Par.
1177. Sale of powder and shot.
1178. Sale of useless ordnance.
1179. Issues to States, credits.
Par.
1180. Sales to States, credits.
1181. Restriction on payment of freight.

Exchange or sale of unserviceable powder and shot.
Mar. 3, 1881, v. 21, p. 468.

1177. The Secretary of War is hereby authorized, in his discretion, to exchange the unserviceable and unsuitable powder and shot on hand for new powder and projectiles, or to sell the same and purchase similar articles with the proceeds of the sales; and he shall make statement of his action under this provision in his next annual report. *Act of March 3, 1881 (21 Stat. L., 468).*

Sale of useless ordnance.
Proceeds available for purchase of new material.
Mar. 3, 1875, v. 18, p. 388.

1178. The Secretary of the Navy is authorized to dispose of the useless ordnance material on hand at public sale according to law. * * * And in the case of the sale of like materials in the War Department, the proceeds of which shall be turned into the Treasury, an amount equal to the net proceeds of such sale is hereby appropriated for the purpose of procuring a supply of material adapted in manufacture and caliber to the present wants of the war service: And there shall be expended in the War Department, under this provision, not more than seventy-five thousand dollars in any one year.[1] *Act of March 3, 1875 (18 Stat. L., 388).*

Issues to States, credits.
Mar. 2, 1889, v. 25, p. 833.

1179. Hereafter the cost to the Ordnance Department of all ordnance and ordnance stores issued to the States, Territories, and District of Columbia, under the act of

---

[1] For rules respecting the disposition of damaged stores or stores that are unsuitable for the public service, see the chapter entitled THE PUBLIC PROPERTY; for rules as to the disposition of the proceeds of the sale of condemned property, see the chapter entitled THE TREASURY DEPARTMENT.

February twelfth, eighteen hundred and eighty-seven, shall be credited to the appropriation for "manufacture of arms at national armories," and used to procure like ordnance stores, and that said appropriation shall be available until exhausted, not exceeding two years.[1] *Act of March 2, 1889 (25 Stat. L., 833).*

Sales to States, proceeds. Mar. 15, 1898, v. 30, p. 326.

1180. The cost of all stores and supplies sold to any State or Territory under section three of the act approved February twenty-fourth, eighteen hundred and ninety-seven, shall be credited to the appropriation from which they were procured, and remain available to procure like stores and supplies for the Army in lieu of those sold as aforesaid. *Act of March 15, 1898 (30 Stat. L., 326).*

Restriction on payment of freight. Mar. 2, 1901, v. 31, p. 910.

1181. No part of the appropriations made for the Ordnance Department shall be used in payment of freight charges on ordnance or ordnance stores issued by said department. *Act of March 2, 1901 (31 Stat. L., 910)*

LOANS AND GRATUITOUS ISSUES.

Loans or gifts of condemned ordnance, etc., authorized. May 22, 1896, v. 29, p. 133.

1182. The Secretary of War and the Secretary of the Navy are each hereby authorized, in their discretion, to loan or give to soldiers' monument associations, posts of the Grand Army of the Republic, and municipal corporations condemned ordnance, guns, and cannon balls which may not be needed in the service of either of said Departments. Such loan or gift shall be made subject to rules and regulations covering the same in each Department, and the Government shall be at no expense in connection with any such loan or gift. *Act of May 22, 1896 (29 Stat. L., 133).*

Issues to the National Home. Mar. 3, 1899, v. 30, p. 1073.

1183. The Chief of Ordnance is authorized to issue such obsolete ordnance, gun carriages, and ordnance stores, as may be needed for ornamental purposes, to the Homes for Disabled Volunteer Soldiers, the Homes to pay for transportation and such other expenses as are necessary.[2] *Act of March 3, 1899 (30 Stat. L., 1073).*

AMMUNITION FOR MORNING AND EVENING GUN.

Ammunition for morning and evening gun. May 26, 1900, v. 31, p. 216.

1184. For firing the morning and evening gun at military posts prescribed by General Orders, Numbered Seventy, Headquarters of the Army, dated July twenty-third, eighteen hundred and sixty-seven, and at National Home for

---

[1] The act of March 15, 1898 (30 Stat. L., 326), contains a similar requirement.

[2] For similar loans, gifts, and issues of ordnance to National Military Park, see the chapter entitled NATIONAL PARKS. For issues to colleges, see the title *Details to Colleges* in th chapter entitled COMMISSIONED OFFICERS.

Disabled Volunteer Soldiers and its several Branches, including National Soldiers' Home in Washington, District of Columbia, and at Soldiers and Sailors' State Homes, including material for cartridges, bags, and so forth, twenty-five thousand dollars.[1] *Act of May 26, 1900 (31 Stat. L., 216).*

BOARD FOR TESTING RIFLED CANNON.

Par.
1185. Public tests.
1186. Calibers, weights, lengths of bore, etc., to be furnished to makers.
1187. Sales of s. b. guns for experimental purposes.
1188. Expenses of officers at proving grounds.

Public tests of rifled cannon, etc.
July 5, 1884, s. 2, v. 23, p. 159.

1185. That hereafter all rifled cannon of any particular material, caliber, or kind, made at the cost of the United States, shall he publicly subjected to the proper test, including such rapid firing as a like gun would be likely to be subjected to in actual battle, for the determination of the endurance of the same to the satisfaction of the President of the United States or such persons as he may select; and he is hereby authorized to select not to exceed five persons, who shall be skilled in such matters; and if such gun shall not prove satisfactory, they shall not be put to use in the Government service. *Sec. 2, act of July 5, 1884 (23 Stat. L., 159).*

Caliber, etc., of guns required for service to be determined by Secretary of War.
Sec. 1, *Ibid.*

1186. It shall be the duty of the Secretary of War to cause the various calibers, lengths of bore, greatest and least admissible weights of guns for each caliber, together with the greatest and least weights of projectiles for each caliber, of all the various calibers required for the service, together with the number of each caliber of gun required to be determined, and to make the same known to manufacturers of ordnance on their application and to report the same to Congress at its next session for its approval. *Sec. 1, ibid.*

Sale of smooth-bore cannon for experimental purposes.
July 5, 1884, s. 3, v. 23, p. 159.

1187. That the Secretary of War and the Secretary of the Navy are hereby authorized to sell to projectors of methods of conversion, for experimental purposes only, any smooth-bore cannon on hand required by them, at prices which shall not be less than have been received from auction sales for such articles, and deliver the same at the cost of the Government, at the nearest convenient place for shipment or public transportation; the cost of delivery to be deducted from the proceeds of sales, and the balance to be covered into the Treasury of the United States. *Sec. 3, act of July 5, 1884 (23 Stat. L., 159).*

---

[1] The annual acts of appropriation since that of September 22, 1888 (25 Stat. L., 488), have contained a similar provision.

Expenses of officers. May 25, 1900, v. 31, p. 186.

1188. For the necessary expenses of officers while temporarily employed on ordnance duties at the proving ground and absent from their proper stations, at the rate of two dollars and fifty cents per diem while so employed, * * * dollars.[1] *Act of May 25, 1900 (31 Stat. L., 186.)*

MISCELLANEOUS PURCHASES.

Contract for breech-loading steel guns of large caliber authorized. Sec. 2, Aug. 18, 1890, v. 26, p. 319.

1189. The Secretary of War is hereby authorized and directed to purchase under contract, after due advertisement inviting proposals, and at prices which the Board of Ordnance and Fortification shall adjudge to be fair to the manufacturer and for the interest of the United States, twenty-five eight-inch, fifty ten-inch, and twenty-five twelve-inch guns, all of which guns shall be breech-loading single-charge steel guns, and of weight and dimensions to be prescribed by the Board, and shall fulfill the conditions hereinafter provided: *Provided*, That if two or more persons, citizens of the United States, submit proposals to furnish said guns, either in part or in whole, at prices not materially different from each other, contracts may be awarded, in such proportion, among the citizens submitting such proposals as the Secretary of War may direct. One type gun of each of the above-mentioned caliber, with the proper supply of ammunition therefor, shall be presented for test at such place and within such time as the contract shall provide, and shall be subjected to such tests in respect to accuracy, range, power, endurance, and general efficiency as the Board of Ordnance and Fortification shall have prescribed. All the other guns of each caliber, with the proper supply of ammunition, shall be delivered at such place and within such times as the contract shall provide, and shall be subjected to the ordinary service test of ten rounds with the full charge and weight of projectile, which shall develop the standard power prescribed for the gun. If the type gun sustains the prescribed test to the satisfaction of the Board of Ordnance and Fortification, it and each of the other guns which sustains the ordinary service test, and the ammunition expended in such tests, shall be accepted under the contract. All guns manufactured under these contracts, including the type guns, shall be subjected to inspection at all stages of manufacture, and no change whatever shall be made in the material, mode of manufacture, or dimensions of the guns for service from those employed in the type gun without the approval of the Secretary of War. Payment for each gun and ammunition for testing same, including cost of transportation, shall be made upon the satisfactory completion of the prescribed test for that gun. All tests of guns shall be made in the presence of the Board and of the person presenting the gun, or his authorized agent, and due regard shall be paid to suggestions offered by him which respect the mode of making such test.

---

[1] This provision has appeared in the several acts of appropriation for fortifications, etc., since that of February 24, 1891 (26 Stat. L., 768). See note to paragraph 1217, *post*.

Maximum expenditures.

Under the provisions of this sections there shall not be expended or contract or contracts entered involving the Government in an aggregate expenditure exceeding three million seven hundred and seventy-five thousand dollars, nor an expenditure on the part of the Government in any one fiscal year in excess of one million dollars. And all guns and materials purchased under the authority of this section shall be of American manufacture and furnished by citizens of the United States: *Provided further*, That contracts may be made for not exceeding one-fourth of the guns herein provided for, to be constructed on the Pacific coast, in the discretion of the Secretary of War. *Sec. 2, act of August 18, 1890 (26 Stat. L., 319).*

American manufacture, etc.

Maximum Pacific coast contracts.

The same; limit of expenditure.

Feb. 24, 1891, v. 26, p. 770.

Section two of "An act making appropriations for fortifications and other works of defense, for the armament thereof, for the procurement of heavy ordnance for trial and service, and for other purposes," approved August eighteenth, eighteen hundred and ninety, is hereby modified and enlarged so that the amount authorized to be expended thereunder be increased to four million two hundred and fifty thousand dollars, to be expended on the terms and conditions and for the purposes therein set forth, except that fifty thousand of said sum shall be reserved to cover all expenses other than the powder and projectiles incident to the tests and inspection of the guns, and also that the Secretary of War be authorized to contract thereunder for such less number of guns than one hundred as he may deem for the best interests of the Government. *Act of February 24, 1891 (26 Stat. L., 770).*

Decreased number of heavy guns may be purchased.

ARMS, ARMORIES, AND ARSENALS.

Par.
1190. Armories, officers, workmen.
1191. Pay of officers, clerks, etc., at armories.
1192. When paid; who to give bond.
1193. Annual accounts to Congress.
1194. Arsenals may be abolished.
1195. Distribution of arms to States, etc.
1196. Leaves of absence to employees.
1197. Enticing away workmen; penalty.
1198. Workmen guilty of certain misconduct.
Par.
1199. Exemption from service as jurors.
1200. No money to be expended in perfecting inventions.
1201. Patents for inventions.
1202. Magazine arms.
1203. Replacing ordnance, etc.
1204. Issues of arms, etc., to Executive Departments.

Armories, officers, workmen.
Apr. 2, 1794, c. 14, s. 2, v. 1, p. 352; Apr. 23, 1808, c. 55, s. 2, v. 2, p. 490; Aug. 5, 1854, c. 267, s. 1, v. 10, p. 578; Aug. 6, 1861, c. 57, s. 5, v. 12, p. 318.
Sec. 1662, R. S.

1190. At each arsenal there shall be established a national armory, in which there shall be employed one superintendent, who shall be an officer of the Ordnance Department, to be designated by the President; one master-armorer, who shall be appointed by the President, and as many workmen as the Secretary of War may, from time to time, deem necessary.

Pay of officers, clerks, etc., at armories.
Aug. 23, 1842, c. 186, s. 2, v. 5, p. 512; Mar. 3, 1857, c. 106, s. 3, v. 11, p. 203; Aug. 6, 1861, c. 57, s. 5, v. 12, p. 318; Mar. 2, 1867, c. 167, s. 12, v. 14, p. 467; June 23, 1874, v. 18, p. 282.
Sec. 1663, R. S.

1191. The ordnance officer in charge of any national armory shall receive no compensation other than his regular pay as an officer of the corps; the master-armorers shall receive fifteen hundred dollars per annum each; the inspectors and clerks, each, eight hundred dollars per annum, except the clerks of the armory at Springfield, Massachusetts, who shall receive sixteen hundred and fifty dollars per annum.

When paid; who to give bond.
Aug. 23, 1842, c. 186, s. 2, v. 5, p. 512.
Sec. 1664, R. S.

1192. The several compensations fixed by the preceding section for master-armorers and inspectors shall be paid quarter-yearly. All military storekeepers and paymasters shall give bond and security for the faithful discharge of their duties, in such sum as may be prescribed by the Secretary of War.

Annual accounts to Congress.
Apr. 2, 1794, c. 14, s. 5, v. 1, p. 352.
Sec. 1665, R. S.

1193. An annual account of the expenses of the national armories shall be laid before Congress, together with an account of the arms made and repaired therein.

Arsenals may be abolished.
Mar. 3, 1853, c. 98, s. 1, v. 10, pp. 214, 217.
Sec. 1666, R. S.

1194. The Secretary of War is authorized to abolish such of the arsenals of the United States as, in his judgment, may be useless or unnecessary.

Distribution of arms to States, etc.
Apr. 23, 1808, c. 55, s. 3, v. 2, p. 490; Mar. 3, 1855, c. 169, s. 7, v. 10, p. 639.
Sec. 1667, R. S.

1195. All the arms procured in virtue of any appropriation authorized by law for the purpose of providing arms and equipments for the whole body of the militia of the United States shall be annually distributed to the several States of the Union according to the number of their Representatives and Senators in Congress, respectively; and all arms for the Territories and for the District of Columbia shall be annually distributed in such quantities, and under such regulations, as the President may prescribe. All such arms are to be transmitted to the several States and Territories by the United States.

LEAVES OF ABSENCE TO EMPLOYEES.

1196. Each and every employee of the navy-yards, gun factories, naval stations, and arsenals of the United States Government be, and is hereby, granted fifteen working days' leave of absence each year without forfeiture of pay during such leave: *Provided*, That it shall be lawful to allow pro rata leave only to those serving twelve consecutive months or more: *And provided further*, That in all cases the heads of divisions shall have discretion as to the time when the leave can best be allowed without detriment to the service, and that absence on account of sickness shall be deducted from the leave hereby granted. *Act of February 1, 1901 (31 Stat. L., 746).*

Leaves of absence to employees.
Feb. 1, 1901, v. 31, p. 746.

MISCELLANEOUS PROVISIONS.

1197. If any person procures or entices any artificer or workman, retained or employed in any arsenal or armory, to depart from the same during the continuance of his engagement, or to avoid or break his contract with the United States, or if any person, after due notice of the engagement of any such workman or armorer, during the continuance of such engagement, retains, hires, or in anywise employs, harbors, or conceals such artificer or workman, he shall be fined not more than fifty dollars, or be imprisoned not more than three months.

Enticing away workmen; penalty.
May 7, 1800, c. 46, s. 2, v. 2, p. 61.
Sec. 1668, R.S.

1198. If any artificer or workman, hired, retained, or employed in any public arsenal or armory, wantonly and carelessly breaks, impairs, or destroys any implements, tools, or utensils, or any stock, or materials for making guns, the property of the United States, or willfully and obstinately refuses to perform the services lawfully assigned to him, pursuant to his contract, he shall forfeit a sum not exceeding twenty dollars for every such act of disobedience or breach of contract, to be recovered in any court having competent jurisdiction thereof.

Workingmen guilty of certain misconduct.
May 7, 1800, c. 46, s. 3, v. 2, p. 62.
Sec. 1669, R.S.

1199. All artificers and workmen employed in the armories and arsenals of the United States shall be exempted, during their time of service, from service as jurors in any court.

Exemption from service as jurors.
May 7, 1800, c. 46, s. 4, v. 2. p. 62; Mar. 3, 1855, c. 169, s. 7, v. 10, p. 639.
Sec. 1671, R.S.

No money to be expended in perfecting inventions.
Mar. 3, 1875, v. 18, p. 455.

1200. Hereafter no money shall be expended at said armories in the perfection of patentable inventions in the manufacture of arms by officers of the Army otherwise compensated for their services to the United States.[1] *Act of March 3, 1875 (18 Stat. L., 455).*

Patents for inventions to be used in the public service.
March 3, 1883, v. 22, p. 625.

1201. The Secretary of the Interior and the Commissioner of Patents are authorized to grant any officer of the Government, except officers and employees of the Patent Office, a patent for any invention of the classes mentioned in section forty-eight hundred and eighty-six of the Revised Statutes, when such invention is used or to be used in the public service, without the payment of any fee: *Provided*, That the applicant in his application shall state that the invention described therein, if patented, may be used by the Government or any of its officers or employees in the prosecution of work for the Government, or by any other person in the United States, without the payment to him of any royalty thereon, which stipulation shall be included in the patent.[2] *Act of March 3, 1883 (22 Stat. L., 625).*

MANUFACTURE OF ARMS.[3]

Manufacture of arms, etc.
Aug. 6, 1894, v. 28, p. 242.

1202. Manufacture of arms at the National armories, four hundred thousand dollars: *Provided*, That this appropriation shall be applicable to the manufacture of the magazine arm recommended for trial by the board, recently in session, and approved by the Secretary of War. *Act of August 6, 1894 (28 Stat. L., 242).*

---

[1] Where a skilled mechanic in the Government employment, in the ordinary course of his employment, with the aids furnished by the Government and the suggestion and advice of his superior officer, produces a device upon which a patent is issued, he can not recover for its use by the Government. Eager *v.* U. S., 35 Ct. Cls., 556; Solomon's Case, 21 ibid., 479; Gill's Case, 22 ibid., 335; 25 ibid., 415.

[2] Where claimants seek to recover a royalty for the use of a patented device, they must show a contract, express or implied. Where on a claim for royalty it appears that the Government at no time recognized a right in the patentees or acknowledged a responsibility, it must be held that no contract exists. Russell and Livermore *v.* U. S., 35 Ct. Cls., 154. A contract to pay is implied whenever the Government, acting through a competent agent, takes or uses individual property, acknowledging explicitly or tacitly that the property is individual property. Schillinger *v.* U. S., 24 Ct. Cls., 278; 155 U. S., 163; Berdan's Case, 25 Ct. Cls., 355; 26 ibid., 48; 30 ibid., 491; 156 U. S., 552.

Section 1694 of the Revised Statutes contained the requirement that "no royalty shall be paid by the United States to any of its officers or employees for the use of any patent for the system, or any part thereof, mentioned in the preceding section (section 1674, Revised Statutes), nor for any such patent in which said officers or employees may be directly or indirectly interested."

[3] By section 1673, Revised Statutes, it was provided that "the breech-loading system for muskets and carbines adopted by the Secretary of War, known as 'the Springfield breech-loading system,' is the only system to be used by the Ordnance Department in the manufacture of muskets and carbines for the military service." Under authority conferred by the act of February 27, 1893 (27 Stat. L., 480), a system of magazine small arms was adopted by the Secretary of War on the recommendation of a board of officers convened for that purpose in pursuance of General Orders, No. 136, A. G. O., of 1890; the magazine arm thus adopted is officially known as the United States magazine rifle, model of 1896. The above requirement was repeated in the acts of February 12, 1895 (28 Stat. L., 682), March 16, 1896 (29 ibid., 68), March 2, 1897, (ibid., 617), and March 15, 1898 (30 ibid., 326).

Replacing ordnance, etc.
Mar. 3, 1899, v 30, p. 1073.

1203. On application of the governor of any State or Territory the Secretary of War is authorized to replace the ordnance and ordnance stores which the volunteers from said State or Territory carried into the service of the United States Army during the recent war with Spain and which have been retained by the United States. *Act of March 3, 1899 (30 Stat. L., 1073).*

ISSUES OF ARMS, ETC., TO EXECUTIVE DEPARTMENTS.

Issue of arms to the several Executive Departments.
Mar. 3, 1879, v. 20, p. 410.

1204. Upon the request of the head of any Department, the Secretary of War be, and he hereby is, authorized and directed to issue arms and ammunition whenever they may be required for the protection of the public money and property, and they may be delivered to any officer of the Department designated by the head of such Department, to be accounted for to the Secretary of War, and to be returned when the necessity for their use has expired. Arms and ammunition heretofore furnished to any Department by the War Department, for which the War Department has not been reimbursed, may be receipted for under the provisions of this act.[1] *Act of March 3, 1879 (20 Stat. L., 410).*

THE UNITED STATES TESTING MACHINE.

Par.
1205. The United States testing machine.
1206. No compensation for officers of the United States.
1207. Tests to be made; use of machine.
1208. Advance payments may be required for tests; record of tests shall be furnished to American Society of Civil Engineers.

The United States testing machine; board.
Sec. 4, Mar. 3, 1875, v. 18, p. 399; Mar. 3, 1873, v. 17, p. 543.

1205. For experiments in testing iron and steel, including the cost of any machine built for such purpose, the sum of fifty thousand dollars is hereby appropriated; and the further sum of twenty-five thousand dollars provided "for improved machinery and instruments for testing American iron and steel" in the act entitled "An act making appropriations for the support of the Army for the year ending June thirtieth, eighteen hundred and seventy-four," approved March third, eighteen hundred and seventy-three, is hereby continued and made available for such purpose; and that the President be, and hereby is, authorized to appoint a board, to consist of one officer of the Engineers of the United States Army, one officer of ordnance of the United States Army, one line officer of the United States Navy, one engineer of the United States Navy, and three civilians, who shall be experts; and it shall be the duty of said board to convene at the earliest practicable moment, at such place as may be designated by the President, for the purpose of determining, by actual tests, the strength and value of all kinds of iron, steel, and other metals which may be submitted to them or by them produced, and to prepare tables which will exhibit the strength and value of said materials for constructive and mechanical purposes, and to provide for the building of a suitable machine for establishing such tests. *Sec. 4, act of March 3, 1875 (18 Stat. L., 399).*

---

[1] Section 2 of the act of May 18, 1898 (30 Stat. L., 419), authorized the Secretary of War and general officers commanding troops in Cuba to make certain issues of arms, ammunition, equipments, etc., to the Cuban people during the existence of the war with Spain.

No compensation to officers of the United States.
Ibid.

Secretary.

1206. No officers in the pay of the Government shall be entitled to, or receive, any additional compensation by reason of any services rendered in connection with this board; but one of the civil experts shall act as secretary of the board, and shall be entitled, under this act, to such compensation as the President may deem proper and fit: *Provided*, That not more than fifteen thousand dollars of the sum herein provided shall be used for the expenses of such board.[1] *Ibid.*

Testing iron and steel; use of machine.
June 20, 1878, v. 20, p. 223.

1207. The Secretary of War is hereby authorized to cause the machine built for testing iron and steel to be set up and applied to the testing of iron and steel for all persons who may desire to use it, upon the payment of a suitable fee for each test; the table of fees to be approved by the Secretary of War, and to be so adjusted from time to time as to defray the actual cost of the tests as near as may be. *Act of June 20, 1878 (20 Stat. L., 223).* That hereafter the tests of iron and steel and other materials for industrial purposes shall be continued, and report thereof shall be made to Congress. *Act of March 3, 1885 (23 Stat. L., 502).*

Advance payments may be required. Record of tests shall be furnished to American Society of Civil Engineers.
June 30, 1882, v. 22, p. 122.

1208. In making tests for private citizens the officer in charge may require payment in advance, and may use the funds so received in making such private tests, making full report thereof to the Chief of Ordnance; and the Chief of Ordnance shall give attention to such programme of tests as may be submitted by the American Society of

---

[1] The act of March 3, 1873 (17 Stat. L., 543), contained an appropriation of $25,000 for "improved machinery and instruments for testing American iron and steel."

Civil Engineers, and the record of such tests shall be furnished said society to be by them published at their own expense.[1] *Act of June 30, 1882 (22 Stat. L., 122).*

THE BOARD OF ORDNANCE AND FORTIFICATION.

Par.
1209. Organization; duties.
1210, 1211. Additional members; artillery officers.
1212. Expenditures.
1213. Additional civilian member.
Par.
1214. No member to be interested in invention, etc.
1215. Investigations.
1216. Right to use inventions.
1217. Per diem to officers.

Board of Ordnance and Fortification.
Sept. 22, 1888, v. 25, p. 489.

1209. A board to consist of the commanding General of the Army, an officer of Engineers, an officer of Ordnance, and an officer of Artillery, to be selected by the Secretary of War, to be called and known as the Board of Ordnance and Fortification; and said Board shall be under the direction of the Secretary of War and subject to his supervision and control in all respects, and shall have power to provide suitable regulations for the inspection of guns and materials at all stages of manufacture to the extent necessary to protect fully the interests of the United States, and generally to provide such regulations concerning matters within said Board's operations as shall be necessary to carry out to the best advantage all duties committed to its charge. *Act of September 22, 1888 (25 Stat. L., 489).*

Duties.

Additional member.
Mar. 1, 1901, v. 31, p. 875.

1210. One additional member shall be added to the said Board of Ordnance and Fortification, who shall be an artillery officer of technical ability and experience, to be selected by the Secretary of War. *Act of March 1, 1901 (31 Stat. L., 875).*

Additional members.
Mar. 3, 1901, v. 31, p. 910.

1211. The Secretary of War is hereby authorized to appoint two additional members for the Board of Ordnance and Fortification, both of whom shall be selected from the Artillery Corps. *Act of March 3, 1901 (31 Stat. L., 910).*

Expenditures.
Ibid.

1212. Subject to the foregoing provisions the expenditures shall be made by the several bureaus of the War Department having jurisdiction of the same under existing law. *Act of September 22, 1888 (25 Stat. L., 489).*

Additional civilian member.
Feb. 24, 1891, v. 26, p. 769.

1213. One additional member shall be added to said Board of Ordnance and Fortification who shall be a civilian and not an exofficer of the Regular Army or Navy, and he shall be nominated by the President, and, by and with the advice and consent of the Senate, appointed, and shall be paid a salary of five thousand dollars per annum and actual traveling expenses when traveling on duty. *Act of February 24, 1891 (26 Stat. L., 769).*

---

[1] The acts of March 3, 1883 (22 Stat. L., 460), July 5, 1884 (23 Stat. L., 112), and March 3, 1885 (23 Stat. L., 502), contain a similar provision.

No member to be interested in device, etc., before Board.
Feb. 18, 1893, v. 27, p. 461.

1214. Hereafter no person shall be a member of or serve on said Board who has been or is in any manner interested in any invention, device, or patent which, or anything similar to which, has been considered or may be considered by or come before said Board for test or adoption; or who is connected with or in the employ of any manufacturer who has or shall have contracts with the United States for any ordnance materials. *Act of February 18, 1893 (27 Stat. L., 461).*

Investigations by the Board.
Sec. 2, Sept. 22, 1888, v. 25, p. 491.
May 25, 1900, v. 31, p. 186.

1215. The Board is authorized to make all needful and proper purchases, investigations, experiments, and tests, to ascertain, with a view to their utilization by the Government, the most effective guns, small arms, cartridges, projectiles, fuzes, explosives, torpedoes, armor plates, and other implements and engines of war; and to purchase or cause to be manufactured, under authority of the Secretary of War, such guns, carriages, armor plates, and other war material as may, in the judgment of said Board, be necessary in the proper discharge of the duty herein devolved upon it by the act approved September twenty-second, eighteen hundred and eighty-eight.[1] *Act of May 25, 1900 (31 Stat. L., 186).*

Right to use inventions.
Aug. 1, 1894, v. 28, p. 215.

1216. Before any money shall be expended in the construction or test of any gun, gun carriage, ammunition, or

---

[1] The act of September 22, 1888 (25 Stat. L., 489), restricts the expenditures of the Board in respect to the investigations, tests, experiments, etc., which may be carried on under its direction under that statute, by the requirement that "the amount expended and liabilities incurred in such purchases, investigations, experiments, and tests shall not exceed five hundred thousand dollars, which sum is hereby appropriated"; and that "said Board shall test, and if found satisfactory, shall purchase two breech-loading field guns of three and two tenths inch bore of aluminum bronze."

By several acts of appropriation the powers of the Board of Ordnance and Fortification have been reduced and defined. By the act of February 24, 1891 (26 Stat. L., 767), the appropriations of the Engineer Department, for gun and mortar batteries and for sites of fortifications, have been withdrawn from the supervision of the Board; by the act of July 23, 1892 (27 Stat. L.,260), all regular appropriations of the Ordnance Department for the armament of fortifications were similarly withdrawn from its supervision. See, also, the acts of February 18, 1893 (27 Stat. L., 461), August 1, 1894 (28 Ibid., 215), March 2, 1895 (Ibid., 706), and June 6, 1896 (29 Ibid., 259), for similar provisions of statutes in which the Board is specially charged with the supervision of stated funds and with the general expenditure of funds appropriated for experimental purposes.

The act of March 2, 1889 (25 Stat. L., 833), conferred authority upon the Board of Ordnance and Fortification "to examine and report upon a site or sites for ordnance testing and proving ground to be used in the testing and proving of heavy ordnance, having in view in the selection of said site or sites their accessibility by land and water, means of transportation, and suitability for the purpose intended, and also the actual and reasonable cost, and value of the land embraced in said site or sites and the least sum for which the same can be procured. Said Board shall report thereon to the Secretary of War, to be submitted to Congress at its next session; and in case the said Board shall select a site or sites and recommend their pur-implements under the supervision of the said Board, the Board shall be satisfied, after due inquiry, that the Government of the United States has a lawful right to use the inventions involved in the construction of such gun, gun carriage, ammunition, or implements, or that the construction or test is made at the request of a person either having such lawful right or authorized to convey the same to the Government. *Act of August 1, 1894 (28 Stat. L., 215).*

Expenses of officers, etc., at proving ground. Feb. 24, 1891, v. 26, p. 768.

1217. For payment of the necessary expenses of the Board, including a per diem allowance to each officer detailed to serve thereon when employed on duty away from his permanent station, of two dollars and fifty cents a day, * * * thousand dollars.[1] *Act of July 23, 1892 (27 Stat. L., 260).*

---

chase, the Secretary of War is hereby authorized to secure written proposals for the sale of the land so recommended, until such time as Congress may act upon the recommendation of said Board and of the Secretary of War."

To enable the Secretary of War, in his discretion, to purchase the land adjoining the Government reservation at Sandy Hook, New Jersey, now belonging to the grantees of the Highland Beach Association of New Jersey, together with the right of way from said land to the main line of the Central Railroad Company of New Jersey, together with the rails, ties, switches, and all the railroad equipment on said lands, twenty-five thousand dollars, or so much thereof as may be necessary. Act of July 23, 1892 (27 Stat. L., 259).

That the President is hereby authorized to appoint a board, to consist of three officers of the Army and three officers of the Navy, who shall examine and report to the Secretary of War, for transmission to Congress for its consideration, what, in their opinion, is the most suitable site on the Pacific coast, or on the rivers or other waters thereof, for the erection of a plant for finishing and assembling the parts of heavy guns and other ordnance for the use of the Army and Navy. That for the payment of the necessary expenses of the board to be appointed under the foregoing provisions the sum of two thousand five hundred dollars is hereby appropriated out of any money in the Treasury not otherwise appropriated. Act of July 23, 1892 (27 Stat. L., 258).

[1] For a similar provision see the acts of February 24, 1891 (26 Stat. L., 768); July 23, 1892 (27 Stat. L., 259); February 18, 1893 (27 Stat. L., 460); March 2, 1895 (28 Stat. L., 706), and June 6, 1896 (29 Stat. L., 259). The several acts of appropriation since that of July 23, 1892, contain provisions for similar allowances to each officer detailed to serve on the Board of Ordnance and Fortification when on duty away from his permanent station. The acts of appropriation since that of August 4, 1894, contain provisions for the necessary traveling expenses of the civilian member of the board when traveling on duty as contemplated in the act of February 24, 1891.

This provision has appeared in all subsequent acts of appropriation. An officer who is authorized to receive compensation "while necessarily employed" only, must produce satisfactory evidence of his employment, and of the necessity therefor, during the period for which he claims compensation. IV Comp. Dec., 424. The Auditor is authorized, and it is his duty, to require the production of satisfactory evidence of the time of actual employment of an officer who is paid a per diem compensation or allowance. Ibid., 479.

The mileage of officers of the Army traveling on duty connected with the Board of Ordnance and Fortification is payable from the appropriation made for the Board as a part of the necessary expenses incident to the performance of the work. III Ibid., 332. Officers of the Army connected with the Board of Ordnance and Fortification, when traveling on duty, should be furnished with transportation in kind by the Quartermaster's Department, in accordance with War Department Circular No. 8, of 1897, but whether the requests for transportation addressed to the railroad companies should be issued by the officers of the Quartermaster's Department exclusively is to be determined by the Secretary of War. Ibid., 590.

HISTORICAL NOTE.—The duties in connection with the procurement, manufacture, and supply of cannon, small arms, and military stores, now performed by the Ordnance Department, seem to have been vested during the Revolutionary period in a purveyor of public supplies, an office created by Congress, which ceased to exist at the close of the war. With a view to secure proper accountability and a more efficient administration in this branch of the military service, President Washington, on January 7, 1794, recommended to Congress that the office of Purveyor of Public Supplies be created and charged "with the duties of receiving, safe-keeping, and distributing the public supplies." The office thus recommended was established by the act of February 23, 1795 (1 Stat. L., 419), and continued to exist until May 31, 1812, when, its duties having been transferred to the several departments of the staff, it was abolished. Sec. 9, act of March 28, 1812 (2 ibid, 696).

The Ordnance Department, *eo nomine*, was established by the act of May 14, 1812 (ibid., 732), and was to consist of one Commissary-General of Ordnance, an assistant commissary-general, four deputy commissaries, and as many assistant deputy commissaries, not exceeding eight, as the President might deem necessary. The Commissary-General of Ordnance was to have the rank and pay of colonel, the assistant commissary-general that of lieutenant-colonel, the deputy-commissaries that of major, and the assistant deputy commissaries that of captain. By the act of February 8, 1815 (3 ibid., 203), the Department was reorganized, its duties were defined, and its strength fixed at one colonel, one lieutenant-colonel, two majors, ten captains, ten first lieutenants, and as many enlisted men, to serve as armorers, blacksmiths, wheelwrights, artificers, etc., as the Secretary of War might deem necessary; by the same enactment the supervision of the several armories, magazines, and arsenals was vested in the Ordnance Department.

By section 4 of the act of March 2, 1821 (3 ibid., 283), the Ordnance Department was merged in the artillery, one captain being added to each regiment of artillery for ordnance duty. Although the Department ceased to exist, for the time, as a separate establishment, the duties pertaining to the ordnance service seem to have continued to be performed by officers of artillery detailed for the purpose. By the act of April 5, 1830 (4 ibid., 504), the Ordnance Department was reconstituted, with the following commissioned strength: One colonel, one lieutenant-colonel, two majors, ten captains, with the pay and allowances of artillery officers of corresponding grades, and as many enlisted men as might be required, not to exceed 250. By section 2 of the act of April 5, 1830, the grade of ordnance-sergeant was established, the number authorized to be appointed being restricted to one for each military post. By section 13 of the act of July 5, 1838 (5 ibid., 256), the President was authorized to add two majors to the department "when he may deem it expedient to increase the same;" he was also authorized to transfer ten first lieutenants and ten second lieutenants to the department from the artillery; by the act of July 7, 1838 (ibid., 308), the number of lieutenants thus authorized to be transferred was reduced to twelve. The act of July 5, 1838, placed officers of ordnance on the same footing in respect to pay and allowances as officers of dragoons. By section 16 of the act of March 3, 1847 (9 ibid., 184), the President was authorized to add to the department, under the conditions set forth in the statute last cited, two captains and six first lieutenants. By section 3 of the act of August 3, 1861 (12 ibid., 287), a chief of ordnance, with the rank and pay of Quartermaster-General (brigadier-general), one colonel, one lieutenant-colonel, and six second lieutenants were added to the establishment. By section 4 of the act of March 3, 1863 (ibid., 743), one lieutenant-colonel, two majors, eight captains, and eight first lieutenants were added; the appointments to be made by promotion "as far as the present Ordnance Corps will permit, and the residue to be appointed by transfer from other regiments and corps of the Army;" by this statute examinations were required in all grades below that of field officer as a condition precedent to promotion.

By section 21 of the act of July 28, 1866 (14 ibid., 335), the peace strength of the department was fixed at one brigadier-general, three colonels, four lieutenant-colonels, ten majors, twenty captains, sixteen first lieutenants, and ten second lieutenants; sixteen ordnance storekeepers were also added to the establishment. Section 6 of the act of March 3, 1869 (15 ibid., 318), contained the requirement that there should be no promotions or appointments in the several staff corps until otherwise directed by law; but this restriction was removed as to the Ordnance Department by the act of June 23, 1874 (18 ibid., 244), which reorganized the department with an authorized strength of one brigadier-general, three colonels, four lieutenant-colonels, ten majors, twenty captains, and sixteen first lieutenants, and provided that all vacancies in the grade of first lieutenant should be filled by transfer from the line of the Army, subject to the examination therein prescribed. The examination for promotion, first required by the act of March 3, 1863, was extended in its scope by the act of June

23, 1874, so as to require that "no appointment or promotion is said department shall hereafter be made until the officer so appointed or promoted shall have passed a satisfactory examination before a board of ordnance officers senior to himself." By the act of July 7, 1898 (30 Stat. L., 720), the composition of the Ordnance Department was fixed at one brigadier-general, four colonels, five lieutenant-colonels. twelve majors, twenty-four captains, and twenty first lieutenants.

By section 23 of the act of February 2, 1901 (31 Stat. L., 754), the permanent strength of the Ordnance Department was fixed at one chief of ordnance with the rank of brigadier-general, four colonels, six lieutenant-colonels, twelve majors, twenty-four captains,, and twenty-four first lieutenants, together with the enlisted men, including ordnance-sergeants, already authorized by law. A system of details was also provided by the operation of which the permanent commissioned personnel of the Department will be gradually replaced, as vacancies occur, by officers detailed from the line of the Army for duty in the Ordnance Department.

CHAPTER XXIV.

THE SIGNAL CORPS.[1]

Par.
1218, 1219. Organization.
1221–1223. Appointments, promotions, details.
1224. Enlisted men.
1225, 1226. War increase.
1227–1230. Duties.
1231–1234. Military telegraph lines.

ORGANIZATION.

Composition.

Feb. 2, 1901, s. 24, v. 31, p. 754.

1218. The Signal Corps shall consist of one Chief Signal Officer with the rank of brigadier-general, one colonel, one lieutenant-colonel, four majors, fourteen captains, fourteen first lieutenants,[2] eighty first-class sergeants, one hundred and twenty sergeants, one hundred and fifty corporals, two hundred and fifty first-class privates, one hundred and fifty second-class privates, and ten cooks.[3] *Sec. 24, act of February 2, 1901 (31 Stat. L., 754).*

Volunteer Signal Corps. *Ibid.*

1219. The President is authorized to continue in service during the present emergency, for duty in the Philippine Islands, five volunteer signal officers with the rank of second lieutenant. This authority shall extend only for the period when their services may be absolutely necessary. *Sec. 24, act of February 2, 1901 (31 Stat. L., 754).*

APPOINTMENTS, PROMOTIONS, DETAILS.

Promotions.

Feb. 2, 1901, s. 26, v. 31, p. 755.

1220. So long as there remain any officers holding permanent appointments in the * * * Signal Corps, including those appointed to original vacancies in the grades of captain and first lieutenant as provided in sections sixteen, seventeen, twenty-one, and twenty-four of this act, they shall be promoted according to seniority in the several grades, as now provided by law, and nothing herein contained shall be deemed to apply to vacancies which can be filled by such promotions or to the periods for which the officers so promoted shall hold their appointments. *Sec. 26, act of February 2, 1901 (31 Stat. L., 755).*

---

[1] For note containing the statutory history of the Signal Corps see end of chapter.

[2] Section 24 of the act of February 2, 1901 (31 Stat. L., 754,) contains a proviso to the effect that "vacancies created or caused by this section shall be filled by promotion of officers of the Signal Corps according to seniority, as now provided by law. Vacancies remaining after such promotions may be filled by appointment of persons who have served in the Volunteer Signal Corps since April twenty-first, eighteen hundred and ninety-eight."

[3] The pay of a first-class sergeant of the Signal Corps was fixed at that of a hospital steward by section 8, act of October 1, 1890 (26 Stat. L., 653). The pay of first-class privates was made the same as that of privates of corresponding grade in the engineer battalion by section 3, act of April 26, 1898 (30 Stat. L., 364).

Appointments, promotions, etc.
Sec. 7, Oct. 1, 1890, v. 26, p. 653; R. S., secs. 1206, 1207, p. 214, amended.

1221. All appointments and promotions in the Signal Corps * * * shall be made after examination and approval under sections twelve hundred and six and twelve hundred and seven of the Revised Statutes,[1] which are hereby amended so as to be applicable to and to provide for the promotion of the lieutenants of the Signal Corps in the same manner as they now apply to the Corps of Engineers and the Ordnance Corps.[2] *Sec. 7, act of October 1, 1890 (26 Stat. L., 653).*

Details.
Feb. 2, 1901, s. 26, v. 31, p. 755.

1222. When any vacancy, except that of the chief of the department or corps, shall occur which can not be filled by promotion as provided in this section, it shall be filled by detail from the line of the Army. *Sec. 26, act of February 2, 1901 (31 Stat. L., 755).*

Same, how made.
Ibid.

1223. Such details shall be made from the grade in which the vacancies exist, under such system of examination as the President may from time to time prescribe. *Ibid.*

ENLISTED MEN.

Enlisted strength.
Feb. 2, 1901, s. 24, v. 31, p. 754.

1224. The Signal Corps shall consist of * * * eighty first-class sergeants,[3] one hundred and twenty sergeants, one hundred and fifty corporals, two hundred and fifty first-class privates, one hundred and fifty second-class privates, and ten cooks. *Sec. 24, act of February 2, 1901 (31 Stat. L., 754).*

WAR INCREASE.

Staff of corps commander.
Apr. 22, 1898, s. 10, v. 30, p. 361.
J. R. No. 53. July 8, 1898, v. 30, p. 752.

1225. So much of section ten of the act of Congress approved April twenty-second, eighteen hundred and ninety-eight, as provides that the staff of a general commanding an army corps shall consist of certain officers, with the rank of lieutenant-colonel, shall be held to include among such officers a chief signal officer. *Sec. 10, act of April 22, 1898 (30 Stat. L., 361); Joint Resolution No. 53, July 8, 1898 (ibid., 752).*

---

[1] This clause regulates the promotion, after examination, of officers holding permanent appointments in the Signal Corps.

[2] The clause relating to the transfer of officers of the line to the Signal Corps was repealed by the act of February 2, 1901. Appointments to original vacancies created or caused by that enactment are governed by the requirements of section 24. See, in this connection, section 24, act of February 2, 1901, and note to paragraph 1218, *ante.*

[3] By section 8 of the act of October 1, 1890 (26 Stat. L., 653), first-class sergeants of the Signal Corps were given the pay of hospital stewards.

Enlisted men. Apr. 26, 1898, s. 3, v. 30, p. 364.

1226. In time of war there shall be added to the Signal Corps of the Army ten corporals and one hundred first-class privates, who shall have the pay and allowances of engineer troops of the same grade. *Sec. 3, act of April 26, 1898 (30 Stat. L., 364).*

DUTIES.

Par.		Par.	
1227.	Chief Signal Officer.	1229.	Accountability for property.
1228.	The same; regulations.	1230.	Appropriations.

Chief Signal Officer; duties. Sec. 2, Oct. 1, 1890, v. 26, p. 653.

1227. The Chief Signal Officer shall have charge, under the direction of the Secretary of War, of all military signal duties, and of books, papers, and devices connected therewith, including telegraph and telephone apparatus and the necessary meteorological instruments for use on target ranges, and other military uses; the construction, repair, and operation of military telegraph lines, and the duty of collecting and transmitting information for the Army by telegraph or otherwise, and all other duties usually pertaining to military signaling; and the operations of said corps shall be confined to strictly military matters.[1] *Sec. 2, act of October 1, 1890 (26 Stat. L., 653).*

Regulations to be prescribed by Chief Signal Officer. Oct. 12, 1888, v. 25, p. 552.

1228. The Chief Signal Officer, subject to the approval of the Secretary of War, is hereby authorized and directed to draw up and enforce in his Bureau a system of rules and regulations for the government of the Signal Bureau, and of all persons in said Bureau, and for the safe-keeping and preservation of all Signal Service property of every kind, and to direct and prescribe the kind, number, and form of all returns and reports, and to enforce compliance therewith. *Act of October 12, 1888 (25 Stat. L., 552).*

Enlisted men, etc., to make returns of property. Oct. 12, 1888, v. 25, p. 552.

1229. From and after the passage of this act, every officer of the Signal Corps, every noncommissioned officer or private of the Signal Corps, and all other officers, agents, or persons who now have in possession, or may hereafter receive or may be intrusted with any stores or supplies, shall, quarterly or more often, if so directed, and in such manner and on such forms as may be prescribed by the Chief Signal Officer, make true and correct returns to the Chief Signal Officer of all Signal Service property and all other supplies and stores of every kind received by or intrusted to them and each of them, or which may, in any manner, come into their and each of their possession or charge. *Ibid.*

---

[1] The act of October 1, 1890 (26 Stat. L., 653), contained the requirement that "the civilian duties now performed by the Signal Corps of the Army shall hereafter devolve upon a bureau to be known as the Weather Bureau, which, on and after July first, eighteen hundred and ninety-one, shall be established in and attached to the Department of Agriculture, and the Signal Corps of the Army shall remain a part of the Military Establishment under the direction of the Secretary of War, and all estimates for its support shall be included with other estimates for the support of the Military Establishment." Section 4 of this enactment, which authorized the detail of officers of the Signal Corps in the Weather Bureau of the Department of Agriculture, was repealed by Joint Resolution No. 57, of July 8, 1898 (30 Stat. L., 752). This enactment finally severed the statutory connection of this corps with the Weather Bureau.

Signal Corps to be appropriated for with the Army.
Sec. 9, Oct. 1, 1890, v. 26, p. 654.

1230. On and after July first, eighteen hundred and ninety-one, the appropriations for the support of the Signal Corps of the Army shall be made with those of other staff corps of the Army. *Sec. 9, act of October 1, 1890 (26 Stat. L., 653).*

MILITARY TELEGRAPH LINES.

Construction, operation, and repair.
Oct. 1, 1890, s. 2, v. 26, p. 653.

1231. The Chief Signal Officer shall have charge, under the direction of the Secretary of War, of * * * the construction, repair, and operation of all military telegraph lines.[1] *Section 2, act of October 1, 1890 (26 Stat. L., 653).*

Telegraph lines in Alaska.
May 26, 1900, v. 31, p. 206.

1232. For the purpose of connecting headquarters, Department of Alaska, at Saint Michael, by military telegraph and cable lines with other military stations in Alaska, four hundred and fifty thousand five hundred and fifty dollars: *Provided*, That commercial business may be done over these military lines under such conditions as may be deemed, by the Secretary of War, equitable and in the public interests, all receipts from such commercial business shall be accounted for and paid into the Treasury of the United States, and that the sum hereby appropriated shall be immediately available: *Provided further*, That no telegraph or cable lines owned or operated or controlled by persons not citizens of the United States, or by any foreign corporation or government, shall be established in or permitted to enter Alaska. *Act of May 26, 1900 (31 Stat. L., 206).*

Receipts to be paid into Treasury.
Mar. 3, 1883, v. 22, p. 616.

1233. After the first day of July, eighteen hundred and eighty-three, all moneys received for the transmission of private dispatches over any and all telegraph lines owned or operated by the United States shall be paid into the Treasury of the United States, as required by section thirty-six hundred and seventeen of the Revised Statutes; and all acts or parts of acts inconsistent herewith are hereby repealed.[1] *Act of March 3, 1883* (*22 Stat. L., 616*).

---

[1] The act of October 1, 1890 (26 Stat. L., 653, par. 1227, *ante*), which places the Chief Signal Officer in charge of "the construction, repair, and operation of military telegraph lines," repealed the act of August 7, 1882 (22 Stat. L., 319), which vested the supervision of the construction and operation of military telegraph lines in department commanders.

Injury to telegraph lines, etc., of United States, interference with working, obstruction, etc.; penalty.
June 23, 1874, v. 18, p. 250.

1234. Any person or persons who shall willfully or maliciously injure or destroy any of the works or propery or material of any telegraphic line constructed and owned, or in process of construction, by the United States, or that may be hereafter constructed and owned or occupied and controlled by the United States, or who shall willfully or maliciously interfere in any way with the working or use of any such telegraphic line, or who shall willfully or maliciously obstruct, hinder, or delay the transmission of any communication over any such telegraphic line, shall be deemed guilty of a misdemeanor, and, on conviction thereof in any district court of the United States having jurisdiction of the same shall be punished by a fine of not less than one hundred nor more than one thousand dollars, or with imprisonment for a term not exceeding three years, or with both, in the discretion of the court. *Act of June 23, 1874* (*18 Stat. L., 250*).

Historical Note.—The office of Signal Officer of the Army, with the rank of major of cavalry, was established by the act of June 21, 1860 (12 Stat. L., 66). By section 17 of the act of March 3, 1863 (ibid., 753), a signal corps was created to consist of a Chief Signal Officer with the rank of colonel, one lieutenant-colonel, two majors who were to be inspectors, and, for each army corps or military department, one captain and as many lieutenants, not exceeding eight, as the President might deem necessary. The officers thus provided for were to receive the mounted pay of their grades, and were to continue in service during the pendency of the existing rebellion. For each officer authorized by the act of March 3, 1863, one sergeant and six privates were to be detailed from the volunteer armies, who were to receive the pay and allowances of enlisted men of engineers. Eligibility for appointment and detail were to be determined, in part, by prior faithful service in the acting signal corps, and were conditioned in all cases, upon the successful passage of a preliminary examination.

A permanent signal corps was added to the military establishment by section 22 of the act of July 28, 1866 (12 Stat. L., 335) (which was embodied in the Revised Statutes as sections 1165, 1166, and 1167). It was to consist of a Chief Signal Officer, with the rank of colonel of cavalry, and of six officers of the line, detailed for signal duty, and one hundred enlisted men, detailed from the battalion of engineers; these details were to be conditioned upon the successful passage of a preliminary examination, and the officers, while so detailed, were to receive mounted pay. By the act of March 3, 1871 (16 ibid., 520), certain duties in connection with the observation and report of storms were assigned to the department. By the act of June 18, 1878

---

[1] The act of March 3, 1875, contained a provision authorizing the Secretary of War "to pay the expenses of operating and keeping in repair the said telegraph lines out of any money received for dispatches sent over said lines; any balance remaining after the payment of such expenses to be covered into the Treasury as a miscellaneous receipt; the money received in any one fiscal year to be used only in payment for the expenses of that year. And a full report of the receipts and expenditures in connection with the said telegraph lines shall be made quarterly to the Secretary of War, through the Chief Signal Officer. And the Chief Signal Officer shall have the charge and control of said lines of telegraph in the construction, repair, and operation of the same."

(20 ibid., 146), the number of enlisted men, hitherto fixed by Executive regulation, was established at four hundred and fifty, and by the act of June 20, 1878 (ibid., 219), the enlisted force of the department was fixed at one hundred and fifty sergeants, thirty corporals, and two hundred and seventy privates, who were to receive the pay and allowances of enlisted men of corresponding grades in the battalion of engineers. By this enactment extra-duty pay was prohibited, and the commissioned force of the department was increased by the annual appointment of two second lieutenants, who were to be selected from the grade of sergeant. By the act of June 16, 1880 (21 ibid., 267), the rank of brigadier-general was conferred upon the Chief Signal Officer, and the number of privates was increased to three hundred and twenty; by the act of August 4, 1886 (24 ibid., 247), the number of second lieutenants was limited to sixteen, the school of instruction at Fort Myer, Va., was abolished, and the Secretary of War was authorized to detail five commissioned officers of the Army for signal duty, this number to be in addition to the second lieutenants already authorized by law; this requirement was repeated in the acts of October 2, 1888 (26 ibid., 537), and March 2, 1889 (ibid., 969), by which enactments the number of second lieutenants was reduced to fourteen.

By the act of October 1, 1890 (26 Stat. L., 653), the Weather Service was transferred to the Department of Agriculture and the strength of the Signal Corps was established at one Chief Signal Officer (brigadier-general), one major, four captains, and four first lieutenants mounted, and fifty sergeants who were to have the pay and allowances of hospital stewards. The second lieutenants not selected for appointment as first lieutenants were to be transferred to the line of the Army. By the act of August 6, 1894, the department was reorganized, the reorganization to take effect upon the occurrence of a vacancy in the office of Chief Signal Officer, when the corps was to consist of one colonel, one lieutenant-colonel, one major, three captains, and three first lieutenants; by the act of March 2, 1897 (29 ibid., 611), the promotions provided for in the act of August 6, 1894, were authorized to be made. By section 2 of the act of May 18, 1898 (30 ibid., 417), and joint resolution No. 53, of July 8, 1898 (ibid., 749), a volunteer Signal Corps was authorized, to consist of one colonel, one lieutenant-colonel, one major, as disbursing officer, and such other officers and men as might be required, not exceeding one lieutenant-colonel for each army corps, and two captains, two first lieutenants, five first-class sergeants, ten sergeants, ten corporals, and thirty first-class privates to each organized division of troops, a certain proportion of whom were to be skilled electricians or telegraph operators.

By section 24 of the act of February 2, 1901 (31 Stat. L., 754), the permanent strength of the Signal Corps was fixed at one Chief Signal Officer with the rank of brigadier-general, one colonel, one lieutenant-colonel, four majors, fourteen captains, fourteen first lieutenants, eighty first-class sergeants, one hundred and twenty sergeants, one hundred and fifty corporals, two hundred and fifty first-class privates, one hundred and fifty second-class privates, and ten cooks; and a system of details was established by the operation of which the permanent commissioned personnel of the department will be gradually replaced, as vacancies occur, by officers detailed from the line of the Army for duty in the Signal Department.

CHAPTER XXV.

THE RECORD AND PENSION OFFICE.

Par.
1235–1236. Organization.
1237. Duties.
1238. Returns, muster rolls, etc.
1239. The same; wars of the Revolution and 1812.
1240. Clerks, how employed.

Par.
1241–1253. Removal of charge of desertion.
1254–1256. Remuster of officers of volunteers.
1257. Certificates of service United States Military Telegraph Corps.

Establishment. May 9, 1892, v. 27, p. 27.

1235. The division organized by the Secretary of War in his office for the preservation and custody of the records of the volunteer armies under the name of the Record and Pension Division is hereby established as now organized, and shall hereafter be known as the Record and Pension Office of the War Department. *Act of May 9, 1892 (27 Stat. L., 27)*.

Composition. Feb. 2, 1901, s. 25, v. 31, p. 754.

1236. The officers of the Record and Pension Office of the War Department shall be a chief of said office with the rank of a brigadier-general and an assistant chief of said office with the rank of major: *Provided*, That any person appointed to be Chief of the Record and Pension Office after the passage of this act shall have the rank of colonel. *Section 25,[1] act of February 2, 1901, (31 Stat. L., 754)*.

Duties. May 9, 1892, v. 27, p. 27.

1237. The Record and Pension Office of the War Department shall, under the Secretary of War, have charge of the military and hospital records of the volunteer armies and the pension and other business of the War Department connected therewith; and all laws or parts of laws inconsistent with the terms of this act are hereby repealed. *Act of May 9, 1892 (27 Stat. L., 27)*.

Returns and muster rolls of volunteers. Apr. 22, 1898, s. 8, v. 30, p. 362.

1238. All returns and muster rolls of organizations of the Volunteer Army and of militia organizations while in the service of the United States shall be rendered to the

---

[1] Section 8 of the act of March 2, 1899 (30 Stat. L., 979), contained the same requirement. By the act of March 3, 1899 (ibid., 1007), this office was exempted from the operation of the reduction clauses of the act of March 2, 1899.

Adjutant-General of the Army, and upon the disbandment of such organizations the records pertaining to them shall be transferred to and filed in the Record and Pension Office of the War Department. And regimental and all other medical officers serving with volunteer troops in the field or elsewhere shall keep a daily record of all soldiers reported sick, or wounded as shown by the morning calls or reports, and shall deposit such reports with other reports provided for in this section with the Record and Pension Office, as provided herein for other reports, returns and muster rolls. *Section 8, act of April 22, 1898 (30 Stat. L., 362).*

All Revolutionary army records, etc., transferred to Secretary of War.
Aug. 18, 1894, v. 28, p. 403.

1239. All military records, such as muster and pay rolls, orders, and reports relating to the personnel or the operations of the armies of the Revolutionary war and of the war of eighteen hundred and twelve, now in any of the Executive Departments, shall be transferred to the Secretary of War, to be preserved, indexed, and prepared for publication.[1] *Act of August 18, 1894 (28 Stat. L., 403).*

Clerks, etc., to be exclusively engaged on work of office.
July 16, 1892, v. 27, p. 92.

1240. All the employees provided for * * * the Record and Pension Office of the War Department shall be exclusively engaged on the work of this office.[2] *Act of July 16, 1892 (27 Stat. L., 92).*

REMOVAL OF THE CHARGE OF DESERTION.

Charges of desertion removed from record of certain volunteers.
Sec. 1, Mar. 2, 1889, v. 25, p. 869.
May 9, 1892, v. 27, p. 27.

1241. The charge of desertion now standing on the rolls and records in the Record and Pension Office of the War Department against any soldier who served in the late war in the volunteer service shall be removed in all cases where it shall be made to appear to the satisfaction of the Secretary of War, from such rolls and records, or from other satisfactory testimony, that such soldier served faithfully until the expiration of his term of enlistment, or until the first day of May, anno Domini eighteen hundred and sixty-five, having previously served six months or more, and, by reason of absence from his command at the time the same was mustered out, failed to be mustered out and to receive an honorable discharge, or that such soldier absented himself from his command, or from hospital while suffering from wounds, injuries, or disease received or contracted in the line of duty and was prevented from completing his term of enlistment by reason of such wounds, injuries, or disease. *Acts of March 2, 1889 (25 Stat. L., 869); May 9, 1892 (27 ibid., 27).*

---

[1] The act of July 27, 1892 (27 Stat. L., 275), had contained the requirement that "the military records of the American Revolution and of the war of eighteen hundred and twelve, now preserved in the Treasury and Interior Departments, be transferred to the War Department, to be preserved in the Record and Pension Division of that Department, and that they shall be properly indexed and arranged for use."

The acts of March 2, 1895 (28 Stat. L., 788), and May 28, 1896 (29 ibid., 161), authorizing the Secretary of War, upon the application of the governor of a State, to furnish to such governor a transcript of the military history of any regiment or company furnished by his State, under such regulations as might be prescribed by the Secretary of War, the expense of preparing such transcript to be borne by the State requesting it.

[2] Subsequent acts of appropriation since that of July 16, 1892 (27 Stat. L., 92), have contained the same restriction.

Applications for removal.
Sec. 2, *ibid.*

1242. The Secretary of War is hereby authorized to remove the charge of desertion from the record of any regular or volunteer soldier in the late war upon proper application therefor, and satisfactory proof in the following cases:

Return to duty

First. That such soldier, after such charge of desertion was made, and within a reasonable time thereafter, voluntarily returned to his command and served faithfully to the end of his term of service, or until discharged.

Absence while sick or wounded.

Second. That such soldier absented himself from his command or from hospital while suffering from wounds, injuries, or disease, received or contracted in the line of duty, and upon recovery voluntarily returned to his command and served faithfully thereafter, or died from such wounds, injuries, or disease while so absent, and before the date of muster out of his command or expiration of his term of service, or was prevented from so returning by reason of such wounds, injuries, or diseases before such muster out or expiration of service.

Minors discharged by order of court.
Sec. 2, *ibid.*
Mar. 2, 1891, v. 26, p. 824.

Third. That such soldier was a minor, and was enlisted without the consent of his parent or guardian, and was released or discharged from such service by the order or decree of any State or United States court on habeas corpus or other judicial proceedings; and in such case such soldier shall not be entitled to any bounty or allowance or pay for any time such soldier was not in the performance of military duty. *Sec. 2, ibid. Act of March 2, 1891 (26 Stat. L., 824).*

Removal of charge where soldier reenlisted.
Mar. 2, 1889, s. 3, v. 25, p. 869.
May 9, 1892, v. 27, p. 27.

1244. The charge of desertion now standing on the rolls and records in the office of the Adjutant-General of the Army [or the Record and Pension Office of the War Department][1] against any regular or volunteer soldier who served in the late war of the rebellion by reason of his having enlisted in any regiment, troop, or company, or in the United States Navy or Marine Corps, without having first received a discharge from the regiment, troop, or company in which he had previously served shall be removed in all cases wherein it shall be made to appear to the satisfaction of the Secretary of War, from such rolls and records, or from other satisfactory testimony, that such reenlistment was not made for the purpose of securing bounty or other gratuity that he would not have been entitled to had he remained under his original term of enlistment; that the absence from the service did not exceed four months, and that such soldier served faithfully under his reenlistment. *Sec. 3, acts of March 2, 1889 (25 Stat. L., 869); May 9, 1892, (27 ibid, 27).*

---

[1] Act of May 9, 1892 (27 Stat. L., 27).

Limitation.

1245. Whenever it shall appear from the official records in the office of the Adjutant-General, United States Army [or the Record and Pension Office of the War Department[1]], that any regular or volunteer soldier of the late war was formally restored to duty from desertion by the commander competent to order his trial for the offense, or, having deserted and being charged with desertion, was, on return to the service, suffered, without such formal restoration, to resume his place in the ranks of his command, serving faithfully thereafter until the expiration of his term, such soldier shall not be deemed to rest under any disability because of such desertion in the prosecution of any claim for pension, on account of disease contracted or wounds or injuries received in the line of his duty as a soldier. *Sec. 4, ibid.*

Return to duty without trial, etc.
Sec. 4, *ibid.*

1246. When the charge of desertion shall be removed under the provisions of this act from the record of any soldier, such soldier, or, in case of his death, the heirs or legal representatives of such soldier, shall receive the pay and bounty due to such soldier. *Sec. 5, ibid.*

Pay and bounty.
Sec. 5, *ibid.*

1247. This act shall not be so construed as to give to any such soldier, or, in case of his death, to the heirs or legal representatives of any such soldier, any pay, bounty, or allowance for any time during which such soldier was absent from his command without proper authority, nor shall it be so construed as to give any pay, bounty, or allowance to any soldier, his heirs or legal representatives, who served in the Army a period of less than six months.[2] *Sec. 5, ibid.*

Not entitled to pay, etc., while absent without leave.
Ibid.

---

[1] Act of May 9, 1892 (27 Stat. L., 27).

[2] The persons from whose military record there may be a removal of the charge of desertion, under the act of March 2, 1889, chapter 390, are those against whom such a charge is "now standing." Deserters, therefore, whose cases had, at the date of

Mexican war soldiers. Application for removal of charge of desertion. Sec. 6, *ibid.*

1248. The Secretary of War is hereby authorized and directed to amend the military record of any soldier who enlisted for the war with Mexico, upon proper application, where the rolls and records of the Adjutant-General's Office show the charge of desertion against him, when such rolls and records show the facts set out in the following cases:

Length of service.

First. That said soldier served faithfully the full term of his enlistment, or having served faithfully for six months or more, and until the fourth day of July anno Domini eighteen hundred and forty-eight, left his command without having received a discharge.

Voluntary return.

Second. That such soldier, after said charge of desertion was entered on the rolls, voluntarily returned to his command within a reasonable time, and served faithfully until discharge. *Sec. 6, ibid.*

Cases excepted. Sec. 7, *ibid.*

1249. The provisions of this act shall not be so construed as to relieve any soldier from the charge of desertion who left his command from disaffection or disloyalty to the Government, or to evade the dangers and hardships of the service, or whilst in the presence of the enemy (not being sick or wounded), or while in arrest or under charges for breach of military duty, or in case of a soldier of the Mexican war who did not actually reach the seat of war. *Sec. 7, ibid.*

---

the act, been judicially duly disposed of—by trial, conviction, and sentence by court-martial—are not within the purview of the statute. Dig. Opin. J. A. G., par. 1103.

Held, that a soldier had "served faithfully" in the sense of section 1 of the last-named act when, having been sentenced to reduction and confinement on conviction of desertion, his sentence had been duly executed, and he had thereupon returned to duty and served for a considerable further period in a status of honor. Ibid., par. 1104.

The act of 1889 provides that the charge of desertion shall be removed if the soldier has "served faithfully until * * * May 1, 1865, having previously served six months or more" * * * *Held*, that the six months of service need not have been continuous, provided they were actually served before May 1, 1865, and the soldier was in service at that date. Ibid., par. 1105.

Held, that a soldier was not within the description of the third division, section 2, of the act of 1889, of having been "discharged" from service by a court of "competent jurisdiction," who had, as a minor, enlisted without consent, been discharged upon habeas corpus by a State court. Ibid., par. 1107.

A pardon does not operate retroactively, and can not therefore "remove a charge" of desertion. It does not wipe out the fact that the party did desert, nor can it make the record say that he did not desert. It can not change facts of history. Ibid., par. 1117.

The restoration of a deserter to duty without trial under par. 132, A. R. [1895], does not operate as an acquittal, or relieve the deserter from the forfeitures of pay (including retained pay) incurred by operation of law under paragraphs 1380 and 1381, A. R. 1895. Ibid., 351, par. 48.

Military record corrected and honorable discharge to issue.
Sec. 8, *ibid.*

1250. When such charge of desertion is removed under the provisions of this act, the soldier shall be restored to a status of honorable service, his military record shall be corrected as the facts may require, and an honorable discharge shall be issued in those cases where the soldier has received none; and he shall be restored to all his rights as to pension, pay, or allowances as if the charge of desertion had never been made; and in case of the death of said soldier, his widow or other legal heir shall be entitled to the same rights as in case of other deceased honorably discharged soldiers. *Sec. 8, ibid.*

Pension, etc., claims.

No pay while absent.

1251. This act shall not be construed to give to any soldier, or his legal representatives or heir, any pay or allowance for any period of time he was absent without leave and not in the performance of military duty. *Ibid.*

Claims to be filed within three years from July 1, 1889.
Secs. 9 and 10, *ibid.*

1252. All applications for relief under this act shall be made to and filed with the Secretary of War within the period of three years from and after July first, eighteen hundred and eighty-nine, and all applications not so made and filed within said term of three years shall be forever barred, and shall not be received or considered.[1] *Sec. 9, ibid.*

Time extended for applications.
Mar. 2, 1895, v. 28, p. 814.

1253. Section nine of the act for the relief of certain volunteer and regular soldiers of the late war and the war with Mexico, approved March second, eighteen hundred and eighty-nine, is hereby so amended as to remove the limitation of time within which applications for relief may be received and acted upon under the provisions of said act. *Act of March 2, 1895 (28 Stat. L., 814).*

REMUSTER OF OFFICERS OF VOLUNTEERS.

Remuster cases.
Feb. 24, 1897, v. 29, p. 593.

1254. Any person who was duly appointed or commissioned to be an officer of the volunteer service during the war of the rebellion, and who was subject to the mustering regulations at the time applied to members of the volunteer service, shall be held and considered to have been mustered into the service of the United States in the grade named in his appointment or commission from the date from which he was to take rank under and by the terms of his said appointment or commission, whether the same was actually received by him or not, and shall be entitled to pay, emoluments, and pension as if actually mustered at that date: *Provided*, That at the date from which he was to take rank by the terms of his said appointment or commission there was a vacancy to which he could be so appointed or commissioned, and his command had either been recruited to the minimum number required by law and the regulations of the War Department, or had been assigned to duty in the field, and that he was actually performing the duties of the grade to which he was so appointed or commissioned; or if not so performing such duties, then he shall be held and considered to have been mustered into service and to be entitled to the benefits of such muster from such time after the date of rank given in his commission as he may have actually entered upon such duties: *Provided further*, That any person held as a prisoner of war, or who may have been absent by reason of wounds, or in hospital by reason of disability received in the service in the line of duty, at the date of issue of his appointment or commission, if a vacancy existed for him in the grade to which so appointed or commissioned, shall be entitled to all the benefits to which he would have been entitled under this act if he had been actually performing the duties of the grade to which he was appointed or commissioned at said date: *Provided further*, That this act shall be construed to apply only in those cases where the commission bears date prior to June twentieth, eighteen hundred and sixty-three, or after that date when the commands of the persons appointed or commissioned were not below the minimum number required by then existing laws and regulations: *And provided further*, That the pay and allowances actually received for the period covered by the recognition extended under this act shall be deducted from the sums otherwise to be paid thereunder. *Act of February 24, 1897 (29 Stat. L., 593).*

---

[1] The act of July 27, 1892 (27 Stat. L., 278), extended the operation of this section for a period of two years from July 1, 1892. By the act of March 2, 1895 (28 *ibid.*, 814), the limitation of time was indefinitely extended.

1255. The heirs or legal representatives of any person whose muster into service shall be recognized and established under the terms of this act shall be entitled to receive the arrears of pay and emoluments due, and the pension, if any, authorized by law, for the grade to which recognition shall be so extended. *Sec. 2, ibid.*

1256. The pay and allowances of any rank or grade paid to and received by any military or naval officer in good faith for services actually performed by such officer in such rank or grade during the war of the rebellion, other than as directed in the fourth proviso of the first section of this act, shall not be charged to or recovered back from such officer because of any defect in the title of such officer to the office, rank, or grade in which such services were so actually performed. *Sec. 3, ibid.*

CERTIFICATES OF SERVICE IN MILITARY TELEGRAPH CORPS.

1257. The Secretary of War is hereby authorized and directed to prepare a roll of all persons who served not less than ninety days in the operation of military telegraph lines during the late civil war, and to issue to each, upon application, unless it appears that his service was not creditably performed, or to the representatives of those who are dead, suitable certificates of honorable service in the military telegraph corps of the Army of the United States, stating the service rendered, the length of such service, and the dates, as near as may be, between which such service was performed: *Provided*, That this law shall not be construed to entitle the persons herein mentioned to any pay, pension, bounty, or rights not herein specifically provided for. *Act of January 26, 1897 (29 Stat L., 497).*

Certificates.
Jan. 26, 1897, v 29, p. 497.

Restriction

CHAPTER XXVI.

CHAPLAINS.

Par.
1258, 1259. Appointment.
1260. Qualifications, age.
1261. The same.
1262. Assignments.

Par.
1263, 1264. Duties.
1265. Reports.
1266. Facilities in performance of duties.

Appointment. Feb. 2, 1901, s. 12, v. 31, p. 750. Sec. 1121, R.S. Sec. 1122, R.S.

1258. The President is authorized to appoint, by and with the advice and consent of the Senate, chaplains in the Army, at the rate of one for each regiment of cavalry and infantry in the United States service, and twelve for the corps of artillery, with the rank, pay, and allowances of captains of infantry.[1] *Sec. 12, act of February 2, 1901 (31 Stat. L., 750).*

The same. *Ibid.*

1259. The office of post chaplain is hereby abolished, and the officers holding commissions as chaplains, or who may hereafter become chaplains, shall he assigned to regiments or to the corps of artillery. *Sec. 12, act of February 2, 1901 (31 Stat. L., 750).*

Qualifications. Sec. 1123, R.S.

1260. No person shall be appointed a chaplain in the Regular Army who shall have passed the age of forty years, nor until he shall have established his fitness as required by existing law. *Sec. 12, act of February 2, 1901 (31 Stat. L., 750).*

---

[1] Section 18 of the act of July 5, 1838 (5 Stat. L., 259), conferred authority upon the officers composing the councils of administration, at certain posts to be designated by the Secretary of War, to employ from time to time such person as they might think proper to officiate as chaplain. The person so selected and appointed was also to perform the duties of schoolmaster at the post at which he was employed. The chaplains so appointed were to receive as compensation a sum to be determined by the council of administration, with the approval of the Secretary of War, but such sum was not to exceed forty dollars per month in any case; each chaplain was allowed four rations per day, with fuel and quarters. The number of chaplain posts, which was fixed at twenty by the act of July 5, 1838, was increased to forty by section 3 of the act of March 3, 1849 (9 Stat. L., 351). Section 7 of the act of July 28, 1866 (14 Stat L., 333), recognized and continued in service the existing force of chaplains; by section 7 of the act of March 2, 1867 (14 Stat. L., 423), chaplains were placed on the same footing in respect to tenure of office, retirement, pensions, and other allowances as other officers of the Army.

Under the authority conferred by the act of April 22, 1898 (30 Stat. L., 363), each regiment of volunteers is entitled to one chaplain; by the act of July 8, 1898 (Ibid., 729), it was provided that chaplains in the volunteer service should have the pay and allowances of captains mounted. The act of March 2, 1899 (30 Stat. L., 977), makes no specific provision for chaplains for the force of volunteers therein authorized.

1261. No person shall be appointed as regimental or post chaplain until he shall furnish proof that he is a regularly ordained minister of some religious denomination, in good standing at the time of his appointment, together with a recommendation for such appointment from some authorized ecclesiastical body, or from not less than five accredited ministers of said denomination.

Qualifications of.
July 17, 1862, c. 200, s. 8, v. 12, p. 595.
Sec. 1123, R.S.

1262. Chaplains may be assigned to such stations as the Secretary of War shall direct, and they may be transferred, as chaplains, from one branch of the service or from one regiment to another, by the Secretary of War, without further commission. When serving in the field, chaplains shall be furnished with necessary means of transportation by the Quartermaster's Department. *Sec. 12, act of February 2, 1901 (31 Stat. L., 750).*

Assignment.
Feb. 2, 1901, s. 12, v. 31, p. 150.

1263. All regimental chaplains and post chaplains shall, when it may be practicable, hold appropriate religious services, for the benefit of the commands to which they may be assigned to duty, at least once on each Sunday, and shall perform appropriate religious burial services at the burial of officers and soldiers who may die in such commands.

Duties as clergymen.
Apr. 9, 1864, c. 53, s. 4, v. 13, p. 46.
Sec. 1125, R.S.

1264. The duty of chaplains of regiments of colored troops and of post chaplains shall include the instruction of the enlisted men in the common English branches of education.[1]

Duties as school-teachers.
July 5, 1838, c. 162, s. 18, v. 5, p. 259; July 28, 1866, c. 299, s. 30, v. 14, p. 337.
Sec. 1124, R.S.

1265. Post and regimental chaplains shall make monthly reports to the Adjutant-General of the Army, through the usual military channels, of the moral condition and general history of the regiments or posts to which they may be attached.

Monthly reports.
Apr. 9, 1864, c. 53, s. 3, v. 13, p. 46; Feb. 27, 1877, c. 69, v. 19, p. 242.
Sec. 1126, R.S.

1266. It shall be the duty of commanders of regiments, hospitals, and posts to afford to chaplains, assigned to the same for duty, such facilities as may aid them in the performance of their duties.

Facilities in performance of duties.
Apr. 9, 1864, c. 53, v. 13, p. 46.
Sec. 1127, R.S.

HISTORICAL NOTE.—The office of chaplain existed in the Revolutionary armies, as is indicated by the requirement of section 1, article 4, of the Rules and Articles of War of 1776, which provides a penalty for the nonperformance of the duties appropriate to the office. The act of March 3, 1791 (1 Stat. L., 222), authorized the appointment of a chaplain in case the President might "deem such appointment necessary to the public interest." As the act contemplated a brigade organization, it would appear that the office thus conditionally created was that of a brigade rather than a regimental chaplain. The inclusion of the chaplain in the "general staff," in section 7 of the act of March 5, 1792 (ibid., 242), and March 3, 1795 (ibid., 430), would also seem to indicate the correctness of this view. No provision was made for the services of chaplains in the enactments respecting the militia—acts of May 2, 1792 (ibid., 264), and May 8, 1792 (ibid., 267)—although these statutes are still in force. The office of chaplain was discontinued on October 1, 1796, in conformity to the requirements of the act of May 30, 1796 (ibid., 483), "to ascertain and fix the military establishment of the United States." The acts authorizing the creation of a provisional army, approved May 28, 1798 (ibid., 561), made no provision for the services or compensation of chaplains, but this omission was supplied by a provision for four chaplains in the act of July 16, 1798 (ibid., 604), who were to be attached to the general staff, and were to receive the pay and allowances of majors. No provision was made for these officers, however, in the act of March 3, 1799 (ibid., 749). By the acts of February 2, 1800 (2 ibid., 7), and May 14, 1800 (ibid., 85), the operation of the foregoing enactments was suspended, and the act of March 16, 1802 (ibid., 133), contained no provision for chaplains, or for the procurement of religious services at military posts.

---

[1] For statutory provisions respecting post schools, see the article relating to military posts in the chapter entitled THE PUBLIC LANDS. These schools are administered in accordance with paragraphs 321, 341, 350, 351, 355, 362, 1110, 1118, 1124, 1127, 1128, and 1137 of the Army Regulations of 1901. For the duties and assignments of chaplains, see paragraphs 48–51, Army Regulations of 1901.

The act of April 12 1808 (2 Stat. L. 481, section 7), passed in contemplation of war with England, authorized the appointment of brigade chaplains, and similar provision was made in section 24 of the act of February 6, 1812 (ibid., 671), which conferred upon these officers the pay and allowances of majors of infantry, and this last-named requirement was repeated in section 16 of the act of January 20, 1813 (ibid., 791). The acts of March 3, 1815 (3 Stat. L., 224); April 24, 1816 (ibid., 297); April 14, 1818 (ibid., 420); April 20, 1818 (ibid., 460); March 2, 1821 (ibid., 615), to reduce and fix the military peace establishment, made no provision for these officers which then ceased to exist.

The office of post chaplain was established by section 18 of the act of July 5, 1838 (5 Stat. L., 259), appointments thereto being vested in the councils of administration of the several military posts. Chaplains were to act as post schoolmasters, and their compensation was to be fixed by the post councils, with the approval of the Secretary of War, but was in no case to exceed forty dollars per month, with four rations per day and an established allowance of fuel and quarters. The number of chaplain posts was fixed at twenty by the act of July 7, 1838 (ibid., 308), which were to be designated by the Secretary of War, and were to be "confined to places most destitute of instruction." By section 3 of the act of March 2, 1849 (9 ibid., 357), the number of chaplain posts was increased to thirty, and by section 2 of the act of February 21, 1857 (11 ibid., 163), the monthly pay proper of chaplains was increased to a sum not exceeding sixty dollars, subject to the approval of the post council of administration.

For each of the regiments of volunteers authorized to be raised for the war with Mexico a chaplain was authorized, and power was conferred upon the President to order the existing post chaplains to the theater of active operations, and, in the event of their refusal to obey such order, their offices were to be declared vacant by the Adjutant-General of the Army; Section 7, act of February 11, 1847 (9 Stat. L., 124). During the war of the rebellion a chaplain was authorized for each regiment of volunteers, who was to have the pay and allowances of a captain of cavalry; section 9, act of July 22, 1861 (12 Stat. L., 270). By section 7 of the act of August 3, 1861 (ibid., 288), none but ministers of some Christian denomination were to be eligible for appointment. By section 2 of the act of May 30, 1862 (ibid., 404), the President was authorized to appoint a chaplain for each general hospital; by the act of July 17, 1862 (ibid., 594), their pay and allowances were fixed and the qualifications for the office were established. Rank, without command, was conferred by the act of April 9, 1862 (13 ibid., 46), in which enactment their duties were still further defined. By section 31 of the act of July 28, 1866 (14 ibid., 337), the existing force was recognized and continued, and one chaplain was authorized for each regiment of colored troops established, "whose duty shall include the instruction of the enlisted men in the common English branches of education;" by section 7 of the act of March 2, 1867 (ibid., 423), the rank of captain of infantry, without command, was conferred, and chaplains were placed upon the same footing in respect to pay, allowances, and emoluments as other officers of the Army. By section 12 of the act of February 2, 1901 (31 ibid., 750), the distinction between post and regimental chaplains was abolished and chaplains were thereafter required to be assigned to regiments of the line or to stations occupied by the troops of the corps of artillery.

CHAPTER XXVII.

COMMISSIONED OFFICERS.

Par.
1267–1270. Appointments.
1271, 1272. Promotions.
1273. Commissions.
1274–1277. Examinations for promotion.
1278–1282. Examination of enlisted men for promotion.
1283. Assignments to regiments.
1284. Transfers.
1285. Details to the staff.
Par.
1286, 1287. Leaves of absence, sick leaves.
1288–1296. Details to colleges.
1297–1305. Retirement of officers.
1306–1325. Retiring boards.
1326, 1327. Resignations.
1328–1330. Dismissal of officers.
1331–1335. Miscellaneous provisions.
1336–1338. Travel pay on discharge.
1339–1341. Deceased officers.

APPOINTMENTS.[1]

Appointment of cadets. May 17, 1886, v. 24, p. 50.

1267. When any cadet of the United States Military Academy has gone through all its classes and received a regular diploma from the academic staff, he may be promoted and commissioned as a second lieutenant in any arm or corps of the Army in which there may be a vacancy and the duties of which he may have been judged competent to perform.[2] *Act of May 17, 1886 (24 Stat. L. 50).*

---

[1] In the absence of statutory restrictions, the power of the President to make appointments or promotions in the line or staff of the Army is plenary, being conferred by Article II, section 11, paragraph 2 of the Constitution of the United States. Congress, however, has established certain uniform rules of promotion, and in several instances has prescribed the classes from which selections must be made in appointing to original or other vacancies. See, for examples of such regulation, section 3, act of June 18, 1878 (20 Stat. L., 145); act of May 17, 1886 (24 ibid., 50); Oct. 1, 1890 (26 ibid., 562); July 30, 1892 (27 ibid., 336); March 8, 1898 (30 ibid., 261); April 26, 1898 (ibid., 364); March 2, 1899 (ibid., 977), and February 2, 1901 (31 ibid., 748). The appointment of general officers is regulated by paragraph 21 of the Regulations of 1895, which contains the requirement that "appointment to the grade of general officer is made by selection from the Army."

[2] The appointment of cadets and enlisted men to the grade of second lieutenant is regulated by the acts above set forth. Section 3 of the act of June 18, 1878 (20 Stat. L., 145), contained the requirement that all vacancies occurring in the grade of second lieutenant should be filled from the graduates of the Military Academy so long as any such remained in the service unassigned, and that vacancies then remaining should be filled by the promotion of meritorious noncommissioned officers, and that any vacancies remaining after the exhaustion of the two classes above named might be filled by the appointment of persons from civil life; but this provision was expressly repealed by section 5 of the act of July 30, 1892 (27 ibid., 336). The policy of the Executive in respect to appointments to the grade of second lieutenant in the line of the Army is now regulated by the following requirements of Army Regulations:

Vacancies in the grade of second lieutenant existing on the 1st day of July each year are filled by appointment, in order, as follows: (1) From graduates of the United

The same. *Ibid.*

1268. In case there shall not at the time be a vacancy in such arm or corps, he may, at the discretion of the President, be promoted and commissioned in it as an additional second lieutenant with the usual pay and allowances of a second lieutenant until a vacancy shall happen. *Ibid.*

Appointment of enlisted men. July 30, 1892, s. 3, v. 27, p. 336.

1269. The vacancies in the grade of second lieutenant heretofore filled by the promotion of meritorious non-commissioned officers of the Army under the provisions of section three of the act approved June eighteenth, eighteen hundred and seventy-eight, shall be filled by the appointment of competitors favorably recommended under this act in the order of merit established by the final examination.[1] *Section 3, act of July 30, 1892 (27 Stat. L., 336).*

Appointments to be to arm of service. Oct. 1, 1892, s. 2, v. 26, p. 562.

1270. Hereafter all appointments in the line of the Army shall be by commission in an arm of the service and not by commission in any particular regiment.[2] *Sec. 2, act of October 1, 1890 (26 Stat. L., 562).*

States Military Academy; (2) from enlisted men of the Army found duly qualified; (3) from civil life. Par. 26, A. R. 1901.

A civilian to be eligible for appointment must be a citizen of the United States, unmarried, between 21 and 27 years of age, must be examined and approved as to habits, moral character, mental and physical ability, education, and general fitness for the service by a board convened and constituted as provided in paragraph 25 for the final competitive examination of soldiers. Par. 31, ibid. For regulations respecting the examination of candidates from civil life for appointment to the grade of second lieutenant in the line of the Army see General Orders No. 35, A. G. O., 1898, and G. O. 156, A. G. O., 1899.

[1] See footnote (2) to section 1267.

[2] An appointment or commission, in order to take effect at all, must be accepted; but, when accepted, it takes effect as of and from its date, i. e., the date on which it is completed by the signature of the appointing power, or that as and from which it purports in terms to be operative. Dig. Opin. J. A. G., 149. See also Marbury *v.* Madison, 1 Cranch, 137; U. S. *v.* Bradley, 10 Pet., 304; U. S. *v.* Le Baron, 19 How., 78; Montgomery *v.* U. S., 5 Ct. Cls., 97. See also chapter entitled THE EXECUTIVE.

The power of the President to fill a vacancy in the Army during a recess of the Senate may be exercised by a letter from the Secretary of War, and such a letter may constitute his commission, there being no law which prescribes the form of a military commission. O'Shea *v.* U. S., 28 Ct. Cls., 392. Where the President is authorized by law to reinstate a discharged Army officer, he may do so without the advice and consent of the Senate. Collins *v.* U. S., 14 Ct. Cls., 22; Dig. Opin. J. A. G., 150. An officer of the Army or Navy of the United States does not hold his office by contract, but at the will of the sovereign power. Crenshaw *v.* U. S., 134 U. S., 98. For statutory provisions respecting appointments to the lowest grades in the several staff corps see the chapters so entitled.

So much of section 1218, Revised Statutes, as amended by the act of May 13, 1884 (23 Stat. L., 21), as requires that "No person who held a commission in the Army or Navy of the United States at the beginning of the late rebellion, and afterwards served in any capacity in the military, naval, or civil service of the so-called Confederate States; or of either of the States in insurrection during the late rebellion, shall be appointed to any position in the Army or Navy of the United States," was repealed by the act of March 31, 1896 (29 Stat. L., 235). For statutory provisions regulating the appointment of officers of volunteers to the Army see section 28 of the act of February 2, 1901 (31 Stat. L., 755), and the act of March 2, 1901 (ibid., p. 900), paragraph 578 *ante.*

PROMOTIONS.

1271. Hereafter promotions to every grade in the Army below the rank of brigadier-general, throughout each arm, corps, or department of the service, shall, subject to the examination hereinafter provided for, be made according to seniority in the next lower grade of that arm, corps, or department.[1] *Sec. 2, act of October 1, 1890 (26 Stat. L., 562).*

Promotion by seniority.
Oct. 1, 1890, v. 26, p. 562.

1272. Hereafter all vacancies occurring in the cavalry, artillery, and infantry above the grade of second lieutenant shall, subject to the examination now required by law, be filled by promotion according to seniority from the next lower grade in each arm.[2] *Sec. 2, act of April 26, 1898 (30 Stat. L., 364).*

The same.
Apr. 26, 1898, s. 2, v. 30, p. 364.

---

[1] The act of October 1, 1890 (26 Stat. L., 562), contained the requirement that all officers above the grade of second lieutenant in the line of the Army should, "subject to such examination, be entitled to promotion in accordance with existing laws and regulations." The effect of this provision was to continue the operation of the rule of regimental promotion in respect to all officers of the line above the grade of second lieutenant. The rule of lineal promotion was made general in its application by section 2 of the act of April 26, 1898 (30 Stat. L., 364). Seniority of rank alone, in the military service, gives no right to promotion. Physical, mental, and moral fitness are required. Steinmetz *v.* U. S., 33 Ct. Cls. R., 404.

[2] APPOINTMENT AND PROMOTION OF COMMISSIONED OFFICERS.

Notices of appointments and promotions are issued by the War Department, through the Adjutant-General of the Army. Par. 20, A. R., 1901.

Appointment to the grade of general officer is made by selection from the Army. Par. 21, ibid.

Promotions in established staff corps and departments to include the grade of colonel will be made by seniority, subject to the examinations required by law. Par. 23, ibid.

HISTORICAL NOTE.

The rule of promotion in the line of the Army, as stated in paragraph 22 of the Regulations of 1889, required that "promotions to the rank of captain will be made regimentally, to major, lieutenant-colonel, and colonel, according to arm of service." This rule, which was replaced by the act of October 1, 1890 (paragraph 938, *supra*), had its origin in an order of the Secretary of War, dated May 26, 1801, which declared that "promotions to the rank of captain shall be made regimentally, and to the rank of major and lieutenant-colonel in the lines of the artillery and infantry, respectively." This order was supplemented by another, issued on May 7, 1808, making the above rule for promotion in the infantry and artillery applicable to the cavalry and riflemen.

The earliest Congressional action on the subject of promotion in the Army is contained in the fifth section of the act of June 26, 1812 (2 Stat. L., 764), which provided that thereafter "the promotion shall be made through the lines of artillerists, light artillery, dragoons, riflemen, and infantry, respectively, according to established rule." The rule therein referred to is that which was established by the Executive order as above stated, and the effect of the statute was to give the order a legislative sanction. Subsequently, by section 12 of the act of March 30, 1814 (3 Stat. L., 113), it was provided "that from and after the passage of this act promotions may be made through the whole Army in its several lines of light artillery, light dragoons, artillery, infantry, and riflemen, respectively." Since the enactment of this last provision, which continued in force down to the revision of the statutes, promotions to the rank of captain have uniformly been made regimentally, so that the construction given thereto, in practice, has been that it made no change or modification of

COMMISSIONS.

Commissions. Mar. 28, 1896, v. 29, p. 75.

1273. Hereafter the commissions of all officers under the direction and control of the Secretary of the Treasury, the Secretary of War, the Secretary of the Navy, and the Secretary of Agriculture shall be made out and recorded in the respective Departments under which they are to serve, and the Department seal affixed thereto, any laws to the contrary notwithstanding: *Provided*, That the said seal shall not be affixed to any such commission before the same shall have been signed by the President of the United States.[1] *Act of March 28, 1896* (*29 Stat. L.*, *75*).

EXAMINATION OF OFFICERS FOR PROMOTION.

Examinations for promotion of all officers below major. Sec. 3, Oct. 1, 1890, v. 26, p. 562.

Where officer passed examination under existing law.

Failure to pass, etc.

Retirement on physical disability contracted in line of duty.

1274. That the President be, and he is hereby, authorized to prescribe a system of examination of all officers of the Army below the rank of major to determine their fitness for promotion, such an examination to be conducted at such times anterior to the accruing of the right to promotion as may be best for the interests of the service: *Provided*, That the President may waive the examination for promotion to any grade in the case of any officer who in pursuance of existing law has passed a satisfactory examination for such grade prior to the passage of this act: *And provided*, That if any officer fails to pass a satisfactory examination and is reported unfit for promotion, the officer next below him in rank, having passed said examination, shall receive the promotion: *And provided*, That should the officer fail in his physical examination, and be found incapacitated for service by reason of physical disability contracted in line of duty he shall be retired with the rank

---

the previously existing rules. According to this construction (which was acted upon for about sixty years) the act of 1814, while it contemplated that promotions should be made in the several lines or arms through the whole Army, and that officers should be promoted only in their respective lines or arms, did not prescribe how promotions within the lines or arms should be made, whether regimentally or lineally. As thus understood—and the language of the act is susceptible of that interpretation—there was no conflict between it and the rule adverted to.

Section 1204, Revised Statutes, contains substantially a reenactment of the provision above quoted from the act of 1814. When embodying that provision in the Revised Statutes, it is reasonable to presume that Congress was familiar with the construction which had been placed thereon, and so long acted upon by the executive department, and that if it had been the intention of that body to introduce a different rule on the subject of promotion, different phraseology would have been chosen to signify such design. By adopting the language of the previous statute the fair inference is that its construction was acquiesced in, and that no change in the law of promotion was intended. XVII Opin. Att. Gen., 65. See, also, paragraph 1318, *post*, and note 1, *supra*.

[1] A commission, whatever its form, is but evidence of the fact that the President has exercised his constitutional power of appointment; there is no provision of law requiring a specified form of commission to be issued to officers in the military service. O'Shea *v.* U. S., 28 Ct. Cls., 392.

to which his seniority entitled him to be promoted; but if he should fail for any other reason he shall be suspended from promotion for one year, when he shall be reexamined, and in case of failure on such reexamination he shall be honorably discharged with one year's pay from the Army.[1]

Failure for other reason.

Failure on reexamination.

1275. The examination of officers appointed in the Army from civil life, or of officers who were officers of volunteers only, or were officers of the militia of the several States called into the service of the United States, or were enlisted men in the regular or volunteer service, either in the Army, Navy, or Marine Corps, during the war of the rebellion, shall be conducted by boards composed entirely of officers who were appointed from civil life or of officers who were officers of volunteers only during said war, and such examination shall relate to fitness for practical service and not to technical and scientific knowledge; and in case of failure of any such officer in the reexamination hereinbefore provided for, he shall be placed upon the retired list of the Army; and no act now in force shall be so construed as to limit or restrict the retirement of officers as herein provided for.[2] *Sec. 3, act of October 1, 1890 (26 Stat. L., 562).*

Examination of officers appointed from civil life, etc.

Composition of boards.

Practical fitness.

Failure.

No existing law to limit retirement.

1276. Officers entitled by this section to examination by a board composed entirely of officers who were appointed from civil life, or who were officers of volunteers only during the war, may, by written waiver filed with the War Department, relinquish such right, in which case the examination of such officers shall be conducted by boards composed as shall be directed by the Secretary of War. *Sec. 1, act of July 27, 1892 (27 Stat. L., 276).*

Officers from civil life may waive board of similar character.

July 27, 1892, v. 27, p. 276.

---

[1] Joint Resolution No. 48, of June 14, 1898 (30 Stat. L., 747), contains the requirement "that during the existing war the President may, in his discretion, waive the one-year suspension from promotion and forthwith order the reexamination provided in certain cases by the third proviso of section three of the act approved October first, eighteen hundred and ninety, entitled 'An act to provide for the examination of certain officers of the Army and to regulate promotions therein.'"

[2] Under the act of Oct. 1, 1890, the finding of the board of examination that the officer is incapacitated for duty is not *per se* final, but must be reported for the action of the Secretary of War and passed upon by him. Where the finding and report of the board have been approved but not yet executed by actual retirement, there may intervene contingencies which would supersede such proceeding, as the trial and dismissal of the officer by court-martial, or the arising of new causes which might make proper that the question of his disability be inquired into by a retiring board convened under Sec. 1246, Revised Statutes. But unless some such new occasion and ground of disqualification be presented the action of the Secretary of War in approving the report remains final and exhaustive, and the officer is entitled to be retired under the act of 1890, and can not legally be ordered before such retiring board. Dig. Opin. J. A. G., par. 2207.

The privilege of retirement which an officer has "with the rank to which his seniority entitled him to be promoted," given by the act of October 1, 1890 (26 Stat. L., 562), is limited to cases where the officer failed in his physical examination only. Steinmetz *v.* U. S., 33 Ct. Cls., 404.

Absence of officer.
Feb. 2, 1901, s. 32, v. 31, p. 756.

1277. When the exigencies of the service of any officer who would be entitled to promotion upon examination require him to remain absent from any place where an examining board could be convened, the President is hereby authorized to promote such officer, subject to examination, and the examination shall take place as soon thereafter as practicable. If upon examination the officer be found disqualified for promotion, he shall, upon the approval of the proceedings by the Secretary of War, be treated in the same manner as if he had been examined prior to promotion. *Sec. 32, act of February 2, 1901 (31 Stat. L., 756).*

EXAMINATION OF ENLISTED MEN FOR PROMOTION.

Promotion of enlisted men.
Sec. 1214, R. S.

1278. The President is hereby authorized to prescribe a system of examination of enlisted men of the Army, by such boards as may be established by him, to determine their fitness for promotion to the grade of second lieutenant:

Qualifications.
July 30, 1892, v. 27, p. 336.

Provided, That all unmarried soldiers under thirty years of age, who are citizens of the United States, are physically sound, who have served honorably not less than two years in the Army, and who have borne a good moral character before and after enlistment, may compete for promotion under any system authorized by this act.[1] *Act of July 30, 1892 (27 Stat. L., 336).*

Examination board.
Sec. 2, *ibid.*

1279. The members and recorder of such boards as may be established by the President, under the provisions of the preceding section, shall be sworn in every case to discharge their duties honestly and faithfully; and the boards may examine witnesses and take depositions, for which purposes they shall have such powers of a court of inquiry as may be necessary. *Sec. 2, ibid.*

---

[1] A soldier to be eligible for the position of candidate for promotion must be a citizen of the United States, unmarried, between 21 and 30 years of age on the 1st of September following his preliminary examination, and of good moral character both before and after enlistment. An applicant will not be ordered for the preliminary examination unless it is apparent that on the 1st of September next following he will have served honorably not less than two years, exclusive of technical service due to furlough or other absence from duty in his own interest; (*a*) nor for the final competitive examination unless he shall have so served. Applications will be made to department commanders on or before February 1 of each year, and company commanders in forwarding them will certify all furloughs had by applicants, stating under what authority they were granted. Par. 30, Army Regulations of 1895.

For regulations respecting the examination of enlisted men for promotion, prepared by the President under the authority conferred by this section, see paragraphs 27–32, Army Regulations of 1901, as modified by General Orders, No. 79, A. G. O., of 1892, No. 32, of 1899, and No. 148, of 1899.

---

a Referring to paragraph 30, Army Regulations, the phrase "exclusive of technical service due to furlough or other absence from duty in his own interest" will not aply to leave of absence or furlough granted to an enlisted man during the first two years of enlistment not exceeding fifteen days in all, nor to such longer furlough as is now authorized by paragraph 107, Army Regulations, in a case which may be determined by competent authority to be extraordinary. Decision Assistant Secretary of War, January 13, 1896. Circular No. 2, A. G. O., 1896.

1280. The vacancies in the grade of second lieutenant heretofore filled by the promotion of meritorious noncommissioned officers of the Army, under the provisions of section three of the act approved June eighteenth, eighteen hundred and seventy-eight, shall be filled by the appointment of competitors favorably recommended under this act, in the order of merit established by the final examination. *Sec. 3, ibid.*

Examinations.
Sec. 3, *ibid.*

1281. Each man who passes the final examination shall receive a certificate of eligibility, setting forth the subjects in which he is proficient and the especial grounds upon which the recommendation is based: *Provided*, That not more than two examinations shall be accorded to the same competitor. *Ibid.*

Certificates of eligibility.
Ibid.

1282. All rights and privileges arising from a certificate of eligibility may be vacated by sentence of a court-martial, but no soldier, while holding the privileges of a certificate, shall be brought before a garrison or regimental court-martial or summary court. *Sec. 4, ibid.; act of June 18, 1898 (30 Stat. L., 483).*

Effect of court-martial.
Sec. 4, *ibid.*

ASSIGNMENTS TO REGIMENTS, TRANSFERS, AND DETAILS TO THE STAFF.

1283. Officers of [all] grades in each arm of the service shall be assigned to regiments, and transferred from one regiment to another, as the interests of the service may require, by orders from the War Department, and hereafter all appointments in the line of the Army shall be by commission in an arm of the service, and not by commission in any particular regiment:[1] *Sec. 2, act of October 1, 1890 (26 Stat. L., 562.).*

Assignment and transfer of officers.
Oct. 1, 1890, s. 2, v. 26, p. 562.

1284. Officers may be transferred from the line to the staff of the Army without prejudice to their rank or promotion in the line; but no officer shall hold, at the same time, an appointment in the line and an appointment in the staff which confer equal rank in the Army. When

Transfers to the staff.
Mar. 3, 1813, c. 52, s. 4, v. 2, p. 819;
Apr. 24, 1816, c. 69, s. 9, v. 3, p. 298;
June 18, 1846, c. 29, s. 7, v. 9, p. 18.
Sec. 1205, R.S.

---

[1] Officers transferred from one arm or corps to another, on mutual application, will be nominated for reappointment with rank as of the date of the commission of the junior officer previous to the transfer, and upon confirmation will be recommissioned accordingly. An officer of the lowest grade in any arm or corps who may be transferred, on his own application, to a vacancy in his grade in any other arm or corps will take rank next after the junior officer of the arm or corps to which he is transferred, and will be nominated for reappointment, with a new date of rank if necessary to fix his proper position, and upon confirmation will be recommissioned accordingly. These new appointments and commissions will determine the rank of transferred officers in their regiments and corps, as well as in the Army. Par. 52, A. R., 1901.

Officers in each arm of the service will be transferred from one regiment to another therein, as the interests of the service require, by orders from the War Department, without change of rank or commission. The transfer or exchange of company officers of a regiment will be made by the Commanding General of the Army. Par. 53, ibid. See also paragraph 1272, *ante*.

any officer so transferred has, in virtue of seniority, obtained or become entitled to a grade of his regiment equal to the grade of his commission in the staff, he shall vacate either his commission in the line or his commission in the staff.

Details to the staff.
Feb. 2, 1901, s. 26, v. 31, p. 755.

1285. When any vacancy, except that of the chief of the department, shall occur (in the Adjutant-General's Department, the Inspector-General's Department, the Quartermaster's Department, the Subsistence Department, the Pay Department, the Ordnance Department, and the Signal Corps) which can not be filled by promotion as provided in this section, it shall be filled by detail from the line of the Army, and no more permanent appointments shall be made in those departments or corps after the original vacancies created by this act shall have been filled. Such details shall be made from the grade in which the vacancies exist, under such system of examination as the President may, from time to time, prescribe. All officers so detailed shall serve for a period of four years, at the expiration of which time they shall return to duty with the line, and officers below the rank of lieutenant-colonel shall not again be eligible for selection in any staff department until they shall have served two years with the line.[1] *Sec. 26, act of February 2, 1901* (*31 Stat. L.*, *755*).

LEAVES OF ABSENCE—SICK LEAVES.

Pay during absence.
Aug. 3, 1861, s. 20, v. 12, p. 290; Mar. 3, 1863, s. 31, v. 12, p. 736; Jan. 20, 1874, s. 11, v. 18, p. 145; July 15, 1870, s. 24, v. 16, p. 320; May 8, 1874, v. 18, p. 43.
Sec. 1265, R.S.

1286. Officers when absent on account of sickness or wounds,[2] or lawfully absent from duty and waiting orders, shall receive full pay; when absent with leave, for other causes, full pay during such absence not exceeding in the aggregate thirty days in one year, and half pay during such absence exceeding thirty days in one year. When absent without leave, they shall forfeit all pay during such absence, unless the absence is excused as unavoidable.[3]

---

[1] For statutory regulations respecting details to the staff see the title *Details to the Staff*, in the chapter entitled THE STAFF DEPARTMENTS.

[2] For requirements of regulations respecting sick leaves see paragraphs 72–76, A. R. 1901.

[3] An officer of the Army who is ordered, even on his own request, to proceed to a particular place, including his home, and "there await orders," reporting thence by letter to the Adjutant-General of the Army and to the headquarters of the department to which he then belongs, is not an officer "absent from duty with leave" within the act of March 3, 1863 (12 Stat. L., 736), which enacts that "any officer absent from duty with leave, except from sickness or wounds, shall during his absence receive half the pay and allowances prescribed by law and no more." Such

Leave on full pay.
July 29, 1876, v. 19, p. 102.

1287. That an act approved May eighth, eighteen hundred and seventy-four, in regard to leave of absence of Army officers, be, and the same is hereby, so amended that all officers on duty shall be allowed, in the discretion of the Secretary of War, sixty days' leave of absence without deduction of pay or allowances: *Provided*, That the same be taken once in two years: *And provided further*, That the leave of absence may be extended to three months, if taken once only in three years, or four months if taken once only in four years.[1] *Act of July 29, 1876* (*19 Stat. L.*, *102*).

DETAILS TO COLLEGES.

Par.
1288. Details from the active list.
1289. The same; restriction.
Par.
1290–1295. Details from the retired list.
1296. Issues of ordnance, etc.

DETAILS FROM THE ACTIVE LIST.

Details to college duty.
Sept. 26, 1888, v. 25, p. 491.
Sec. 1225, R.S.

1288. The President may, upon the application of any established military institute, seminary or academy, college or university within the United States, having capacity to educate at the same time not less than one hundred and fifty male students, detail an officer of the Army or Navy to act as superintendent or professor thereof; but the number of officers so detailed shall not exceed [one hundred][2] from the Army and ten from the Navy, being a maximum of one hundred and ten at any time, and they shall be apportioned throughout the United States, first, to those State institutions applying for such detail that are required to provide instruction in military tactics under the provisions of the act of Congress of July second, eighteen hundred and sixty-two, donating lands for the establishment of colleges where the leading object shall be the practical instruction of the industrial classes in agriculture

Limit.

---

an officer is waiting orders in pursuance of law, but is not absent from duty on leave. U. S. *v.* Williamson, 23 Wall., 411.

This statute is amendatory of the act of May 8, 1874, which provided "that all officers on duty at any point west of a line drawn north and south through Omaha City, and north of a line drawn east and west upon the southern boundary of Arizona, shall be allowed sixty days' leave of absence without deduction of pay or allowances: *Provided*, That the same is taken but once in two years: *And provided further*, That the leave of absence may be extended to three months, if taken once only in three years; or four months if taken once only in four years."

[1] For regulations respecting leaves of absence see paragraphs 54–71, A. R., 1901.

[2] The number of officers that may be detailed under the authority conferred by sec. 1225, R. S., was increased from fifty to seventy-five by the act of January 13, 1891 (26 Stat. L., 716), and to one hundred by the act of November 3, 1893 (28 ibid., 7); see paragraph 1289, *post.* For orders regulating the subject of details, see G. O., No. 70, A. G. O., of 1897.

and the mechanic arts, including military tactics; and after that, said details to be distributed, as nearly as may be practicable, according to population. *Act of September 26, 1888 (25 Stat. L., 491).*

Number of officers increased.
Nov. 3, 1893, v. 8, p. 7.

1289. Section twelve hundred and twenty-five of the Revised Statutes, concerning details of officers of the Army and Navy to educational institutions, is hereby, amended so as to permit the President to detail under the provisions of said act not to exceed one hundred officers of the Army of the United States; and no officer shall be thus detailed who has not had five years' service in the Army, and no detail to such duty shall extend for more than four years, and officers on the retired list of the Army may upon their own application be detailed to such duty and when so detailed shall receive the full pay of their rank,[1] and the maximum number of officers of the Army and Navy to be detailed at any one time under the provisions of the act approved January thirteenth, eighteen hundred and ninety-one, amending section twelve hundred and twenty-five of the Revised Statutes as amended by an act approved September twenty-sixth, eighteen hundred and eighty-eight, is hereby increased to one hundred and ten. *Act of November 3, 1893 (28 Stat. L., 7).*

Duration.

Limit as to number.

DETAILS FROM THE RETIRED LIST.

Details from retired list.
Feb. 26, 1901, v. 31, p. 810.

1290. Section twelve hundred and twenty-five of the Revised Statutes, concerning the detail of officers of the Army and Navy to educational institutions, be, and the same is hereby, amended so as to permit the President to detail under the provisions of that act, and in addition to the detail of the officers of the Army and Navy now authorized to be detailed under the existing provisions of said act, such retired officers of the Army and Navy of the United States as in his judgment may be required for that purpose, to act as instructors in military drill and tactics in schools in the United States, where such instruction shall have been authorized by the educational authorities thereof, and where the services of such instructors shall have been applied for by said authorities. *Act of February 26, 1901 (31 Stat L., 810).*

Conditions of detail.
Sec. 2, *ibid.*

1291. No detail shall be made under this act to any school unless it shall pay the cost of commutation of quarters of the retired officers detailed thereto and the extra-duty pay to which the latter may be entitled by law to receive for the performance of special duty: *Provided*, That no detail shall be made under the provisions of this act unless the officers to be detailed are willing to accept such position without compensation from the Government other than their retired pay. *Sec. 2, ibid.*

---

[1] Retired officers, detailed to educational institutions upon their own application, are now entitled to receive the full pay of their rank. VI Compt. Dec., 120.

Issues of ordnance, etc.
Sec. 3, *ibid.*

1292. The Secretary of War is authorized to issue at his discretion, and under proper regulations to be prescribed by him, out of ordnance and ordnance stores belonging to the Government, and which can be spared for that purpose, upon the approval of the governors of the respective States, such number of the same as may be required for military instruction and practice by such school, and the Secretary shall require a bond in each case, for double the value of the property, for the care and safe keeping thereof, and for the return of the same when required.[1] *Sec. 3, ibid.*

Detail as professor in a college.
July 15, 1870, c. 294, s. 23, v. 16, p. 320; Feb. 27, 1877, c. 69, v. 19, p. 242.
Sec. 1260, R.S.

1293. Any retired officer may, on his own application, be detailed to serve as professor in any college. But while so serving, such officer shall be allowed no additional compensation.

Detail of retired officers.
May 4, 1880, v. 21, p. 113.

1294. Upon the application of any college, university, or institution of learning incorporated under the laws of any State within the United States, having capacity at the same time to educate not less than one hundred and fifty male students, the President may detail an officer of the Army on the retired list to act as president, superintendent, or professor thereof; and such officer may receive from the institution to which he may be detailed the difference between his retired and full pay, and shall not receive any additional pay or allowance from the United States.[2] *Act of May 4, 1880 (21 Stat. L., 113).*

Additional pay.

Detail of retired officers to colleges not limited.

1295. Nothing in the act entitled "An act to increase the number of officers of the Army to be detailed to colleges," approved November third, eighteen hundred and ninety-three, shall be so construed as to prevent, limit, or restrict the detail of retired officers of the Army at institutions of learning under the provisions of section twelve hundred and sixty, Revised Statutes, and the act making appropriations for the support of the Army, and so forth, approved May fourth, eighteen hundred and eighty, nor to forbid the issue of ordnance and ordnance stores, as provided in the act approved September twenty-sixth, eighteen hundred and eighty-eight, amending section twelve hundred and twenty-five, Revised Statutes, to the institutions at which retired officers may be so detailed; and said act of November third, eighteen hundred and ninety-three, and said act of May fourth, eighteen hundred and eighty, shall not be construed to allow the full pay of their rank to retired officers detailed under said section twelve hundred and sixty, Revised Statutes, and said act of May fourth, eighteen hundred and eighty.[1] *Act of August 6, 1894 (28 Stat. L., 235).*

---

[1] Section 4 of the above enactment contained a clause giving immediate effect to the statute. For other statutes regulating the detail of retired officers at colleges see the paragraphs next following.

[2] Officers of the Army on the retired list who, upon their own application, are detailed to educational institutions in accordance with the provisions of the act of November 3, 1893 (28 Stat. L., 7), are entitled to the full pay of their rank. VI Compt. Dec., 120.

Issues of ordnance, etc.

Aug. 6, 1894, v. 28, p. 235.

Pay not increased.

ISSUES OF ORDNANCE.

Ordnance stores for colleges.

Sept. 26, 1888, v. 25, p. 491.

1296. The Secretary of War is authorized to issue, at his discretion and under proper regulations to be prescribed by him, out of ordnance and ordnance stores belonging to the Government, and which can be spared for that purpose, such number of the same as may appear to be required for military instruction and practice by the students of any college or university under the provisions of this section, and the Secretary shall require a bond in each case, in double the value of the property, for the care and safe keeping thereof, and for the return of the same when required: *Provided*, That nothing in this act shall be so construed as to prevent the detail of officers of the Engineer Corps of the Navy as professors in scientific schools or colleges as now provided by act of Congress approved February twenty-sixth, eighteen hundred and seventy-nine, entitled "An act to promote a knowledge of steam engineering and iron shipbuilding among the students of scientific schools or colleges in the United States;" and the Secretary of War is hereby authorized to issue ordnance and ordnance stores belonging to the Government on the terms and conditions hereinbefore provided to any college or university at which a retired officer of the Army may be assigned as provided by section twelve hundred and sixty of the Revised Statutes.[2] *Act of September 26, 1888 (25 Stat. L., 491).*

---

[1] Officers of the Army on the retired list who, upon their own application, are detailed to educational institutions in accordance with the provisions of the act of November 3, 1893 (28 Stat. L., 7), are entitled to the full pay of their rank. VI Compt. Dec., 120.

[2] This statute replaces section 1225, Revised Statutes, as amended by the act of July 5, 1884, "saving always, however, all acts and things done under the said amended section as heretofore existing."

RETIREMENT OF OFFICERS.[1]

Par.
1297. Forty years' service; thirty years' service.
1298. Forty-five years' service, age 62.
1299. Retirement at 64 years of age.
1300. The same, the unlimited retired list.
Par.
1301. The same, the limited retired list.
1302. The same, transfers to unlimited list.
1303. Service for retirement.
1304. Heads of staff departments.
1305. Retirement for disability.

1297. When an officer has served forty consecutive years as a commissioned officer, he shall, if he makes application therefor to the President, be retired from active service and placed upon the retired list. When an officer has been thirty years in the service, he may, upon his own application, in the discretion of the President, be so retired, and placed on the retired list.

Retirement upon officer's own application after 40 years' service.
Aug. 3, 1861, c. 42, s. 15, v. 12, p. 289; July 15, 1870, c. 294, ss. 4, 5, v. 16, p. 317.
Sec. 1243, R. S.

1298. When any officer has served forty-five years as a commissioned officer, or is sixty-two years old, he may be retired from active service at the discretion of the President.

Retirement at discretion of President after 45 years' service, or at the age of 62.
July 17, 1862, c. 200, s. 12, v. 12, p. 596.
Sec. 1244, R. S.

1299. On and after the passage of this act when an officer has served forty years either as an officer or soldier in the regular or volunteer service, or both, he shall, if he make application therefor to the President, be retired from active service and placed on the retired list, and, when an officer is sixty-four years of age, he shall be retired from active service and placed on the retired list: *Provided, further*, That the General of the Army, when retired, shall be retired without reduction in his current pay and allowances; and no act now in force shall be so construed as to limit or restrict the retirement of officers as herein provided for.[2] *Act of June 30, 1882 (22 Stat. L., 117).*

The same; compulsory retirement at age 64.
June 30, 1882, v. 22, p. 117.

1300. Nothing contained in the act making appropriations for the support of the Army for the fiscal year ending June thirtieth, eighteen hundred and eighty three, approved June thirtieth, eighteen hundred and eighty-two, shall be so construed as to prevent, limit, or restrict retirements from active service in the Army, as authorized by law in force at the date of the approval of said act, retirements under the provisions of said act of June thirtieth, eighteen hundred and eighty-two, being in addition to those theretofore authorized by law.[2] *Act of March 3, 1883 (22 Stat. L., 457).*

Unlimited retired list.
Mar. 3, 1883, v. 22, p. 457.

---

[1] For statutes establishing the limited retired list see paragraph 1301, *post*. For statutes creating the unlimited retired list see paragraphs 1299 and 1300, *post*.

[2] These statutes created the unlimited retired list.

Retired list.
Aug. 3, 1861, s. 16, v. 12, p. 289; July 15, 1870, s. 5, v. 16, p. 317; June 18, 1878, s. 7, v. 20, p. 150; Feb. 16, 1891, v. 26, p. 763.
Sec. 1258, R. S.

1301. The whole number of officers of the Army on the retired list shall not at any time exceed three hundred and fifty, and any less number to be allowed thereon may be fixed by the President in his discretion.[1] *Act of February 16, 1891 (26 Stat. L., 763).*

Transfer of officers from limited to unlimited list.
February 16, 1891, v. 26, p. 763.

Limited retired list decreased.

Proviso.

Special retirements.

1302. When officers who have been placed on the limited retired list as established by section seven, chapter two hundred and sixty-three, page one hundred and fifty, volume twenty, United States Statutes at Large, shall have attained the age of sixty-four years they shall be transferred from said limited retired list to the unlimited list of officers retired by operation of law because of having attained said age of sixty-four years. And the limited retired list shall hereafter consist of three hundred and fifty instead of four hundred, as now fixed by law: *Provided*, That officers who have been placed on the retired list by special authority of Congress shall not form part of the limited retired list established by this act. *Act of February 16, 1891 (26 Stat. L., 763).*

Service counted in retirement, etc.
June 18, 1878, s. 7, v. 20, p. 150.

1303. On and after the passage of this act, all officers of the Army of the United States who have served as officers in the volunteer forces during the war of the rebellion, or as enlisted men in the armies of the United States, regular or volunteer, shall be, and are hereby, credited with the full time they may have served as such officers and as such enlisted men in computing their service for longevity pay and retirement. *Sec. 7, act of June 18, 1878 (20 Stat. L., 150).*

Head of a staff department.
Feb. 2, 1901, s. 26, v. 31, p. 755.

1304. Any officer now holding office in any corps or department who shall hereafter serve as chief of a staff corps or department and shall subsequently be retired, shall be retired with the rank, pay, and allowances authorized by law for the retirement of such corps or department chief. *Sec. 26, act of February 2, 1901 (31 Stat. L., 755).*

Retirement for disability.
Aug. 3, 1861, c. 42, s. 16, v. 12, p. 289.
Sec. 1245, R. S.

1305. When any officer has become incapable of performing the duties of his office, he shall be either retired from active service, or wholly retired from the service, by the President, as hereinafter provided.

---

[1] The limited retired list was established by section 16, of the act of August 3, 1861, 12 Stat. L., 289, which provided that the number of officers retired in accordance with the authority conferred by the act should not, at any time, exceed 7 per cent of the whole number of offices of the Army as fixed by law. By section 5, of the act of July 15, 1870, 16 Stat. L., 317, sec. 1258, Rev. Stat., the number of officers to be borne upon the retired list was to be determined by the President, in his discretion, but was not to exceed 300. By section 7, of the act of July 17, 1878, 20 Stat. L., 150, the number of retired officers was increased to 400. By the act of February 16, 1891, 26 Stat. L., 763, the number was reduced and fixed at 350, the number now authorized by law. For statutes in relation to the retirement of officers found physically disqualified for promotion by boards of examination see paragraphs 1274 and 1275, *ante*.

RETIRING BOARDS—RETIRED OFFICERS.

Par.
1306. Composition of board.
1307. Oath of members.
1308. Powers and duties.
1309. Findings.
1310. Revision by President.
1311. Disability incident to service.
1312. Same not incident to service.
1313. Officer entitled to hearing.
1314, 1315. Retirement on actual rank.
1316. Pay of retired officers.
Par.
1317. Status of retired officers.
1318. Vacancies caused by retirement.
1319. Rights and liabilities.
1320. Assignment to Soldiers' Home.
1321. Eligibility to office.
1322. Duty in time of war.
1323. Adjutant-General to militia of District of Columbia.
1324. Holding office, restriction.
1325. Clerks to retired officers prohibited.

Composition of retiring board.
Aug. 3, 1861, c. 42, s. 17, v. 12, p. 289.
Sec. 1246, R.S.

1306. The Secretary of War, under the direction of the President, shall, from time to time, assemble an Army retiring board, consisting of not more than nine nor less than five officers, two-fifths of whom shall be selected from the Medical Corps. The board, excepting the officer selected from the Medical Corps, shall be composed, as far as may be, of seniors in rank to the officer whose disability is inquired of.

Oath of members.
Aug. 3, 1861, c. 42, s. 17, v. 12, p. 290.
Sec. 1247, R.S.

1307. The members of said board shall be sworn in every case to discharge their duties honestly and impartially.

Powers and duties.
Aug. 3, 1861, c, 42, s. 17, v. 12, p. 290.
Sec. 1248, R.S.

1308. A retiring board may inquire into and determine the facts touching the nature and occasion of the disability of any officer who appears to be incapable of performing the duties of his office, and shall have such powers of a court-martial and of a court of inquiry as may be necessary for that purpose.[1]

Findings.
Aug. 3, 1861, c 42, s. 17, v. 12, p. 290.
Sec. 1249, R.S.

1309. When the board finds an officer incapacitated for active service, it shall also find and report the cause which, in its judgment, has produced his incapacity, and whether such cause is an incident of service.[2]

Revision by the President.

1310. The proceedings and decision of the board shall be transmitted to the Secretary of War, and shall be laid by

---

[1] This provision does not authorize a retiring board to entertain a charge of a military offense, as such, or to try an officer. Dig. Opin. J. A. G., par. 2192. The investigation of a retiring board is not affected by any limitation as to time, as is that of a court-martial. Such a board may therefore inquire into the matter of a disability, however long since it may have originated. Ibid., par. 2193.

[2] *Held* that the law (secs. 1248 and 1249, Rev. Stats.) contemplated an existing and not a purely prospective and contingent incapacity; and that an inquiry into an officer's general efficiency could be pertinent only in so far as it could be regarded as going to show that his inefficiency, if found, was the result of an impairment of health. Ibid., par. 2204.

Held that the cause of incapacity intended in this section was a physical cause; that moral obliquity was not had in view; and that the matter of the financial integrity of the officer was beyond the jurisdiction or the board. Ibid., par. 2203. The incapacity may result from habitual drunkenness. Ibid., par. 2196.

Aug. 3, 1861, c. 42, s. 17, v. 12, p. 290. Sec. 1250, R.S.

him before the President for his approval or disapproval and orders in the case.[1]

Disability incident to service. Aug. 3, 1861, c. 42, s. 17, v. 12, p. 290. Sec. 1251, R.S.

1311. When a retiring board finds that an officer is incapacitated for active service, and that his incapacity is the result of an incident of service, and such decision is approved by the President, said officer shall be retired from active service and placed on the list of retired officers.

Disability not incident to service. Aug. 3, 1861, c. 42, s. 17, v. 12, p. 290. Sec. 1252, R.S.

1312. When the board finds that an officer is incapacitated for active service, and that his incapacity is not the result of any incident of service, and its decision is approved by the President,[1] the officer shall be retired from active service, or wholly retired from the service, as the President may determine. The names of officers wholly retired from the service shall be omitted from the Army Register.[2]

Officers entitled to a hearing. Aug. 3, 1861, c. 42, s. 17, v. 12, p. 290. Sec. 1253, R.S.

1313. Except in cases where an officer may be retired by the President upon his own application, or by reason of his having served forty-five years, or of his being sixty-two years old, no officer shall be retired from active service, nor shall an officer, in any case, be wholly retired from the service, without a full and fair hearing before an Army retiring board, if, upon due summons, he demands it.[3]

---

[1] The finding of a retiring board under sec. 1251 or sec. 1252, Rev. Stats., is in the nature of a recommendation, and till it is "approved by the President" no retirement can be ordered thereupon. Ibid., par. 2194.

The finding of a retiring board, approved by the President, is conclusive as to the facts. The board finds the facts and the President approves or disapproves the finding, but the law does not empower him to modify the finding or to substitute a different one. There is here a judicial power vested in the two, and not in the President acting singly, and when the power has once been fully exercised it is exhausted as to the case. Dig. Opin. J. A. G., par. 2206; U. S. *v.* Burchard, 125 U. S., 179; U. S. *v.* Miller, 19 Ct. Cls., 338.

When the President has once acted upon the findings of a retiring board his power over the case is exhausted and his subsequent orders in respect to such officer are void for want of authority. XIX Opin. Att. Gen., 202.

[2] To be "wholly retired," in accordance with the terms of this section, is to be put out of the Army and out of office. An officer wholly retired becomes a civilian, and can be readmitted to the service only by a new appointment. Dig. Opin. J. A. G., 666, par. 9; Miller *v.* U. S., 19 Ct. Cls., 338.

[3] The provision of this section that an officer shall not be "wholly retired from the service without a full and fair hearing before an Army retiring board if, upon due summons, he demands it," may be said to entitle him to appear before the board (with counsel, if desired), and to introduce testimony of his own, to cross-examine the witnesses examined by the board, including the medical members of the board who may have taken part in the medical examination, and have stated, or reported to the board, the result of the same. If the officer does not elect to appear before the board when summoned, he waives the right to a hearing, and can not properly take exception to a conclusion arrived at in his absence. Dig. Opin. J. A. G., par. 2197. When the President approves and acts upon the report of a retiring board he thereby determines that the officer has had a full and fair hearing. Miller *v.* U. S., 19 Ct. Cls. 338. But see XVI Att. Gen. Opin., 20.

An officer, on being wholly retired, becomes a civilian, and can be readmitted to the service only by a new appointment. But he can not be appointed at once to the retired list. A civilian can not be appointed as a retired officer. He must first be appointed an officer on the active list, of a certain rank. None but a commissioned officer on the active list of the Army can be placed on the retired list. Dig. Opin. J. A. Gen., 666, par. 11; XIX Opin. Att. Gen., 506.

1314. Officers hereafter retired from active service shall be retired upon the actual rank held by them at the date of retirement.

To be retired on actual rank.
June 10, 1872, v. 17, p. 378; Mar. 3, 1875, v. 18, p. 512. Sec. 1254, R.S.

1315. That all officers of the Army who have been heretofore retired by reason of disability arising from wounds received in action shall be considered as retired upon the actual rank held by them, whether in the regular or volunteer service, at the time when such wound was received, and shall be borne on the retired list and receive pay hereafter accordingly; and this section shall be taken and construed to include those now borne on the retired list placed upon it on account of wounds received in action: *Provided*, That no part of the foregoing act shall apply to those officers who had been in service as commissioned officers twenty-five years at the date of their retirement; nor to those retired officers who had lost an arm or leg, or has an arm or leg permanently disabled by reason of resection, on account of wounds, or both eyes by reason of wounds received in battle; and every such officer now borne on the retired list shall be continued thereon notwithstanding the provisions of section two chapter thirty-eight act of March thirty, eighteen hundred and sixty-eight; *and be it also provided*, that no retired officer shall be affected by this act, who has been retired or may hereafter be retired on the rank held by him at the time of his retirement.[1] *Sec. 2, act of March 3, 1875 (18 Stat. L., 512).*

Officers retired on actual rank.
Sec. 2, Mar. 3, 1875, v. 18, p. 512; 1868, c. 38, s. 2, v. 15, p. 58.

PAY OF RETIRED OFFICERS.

1316. Officers retired from active service shall receive seventy-five per centum of the pay of the rank upon which they were retired.[2]

Pay of retired officers.
Sec. 1274, R.S.

MISCELLANEOUS PROVISIONS.

1317. Officers retired from active service shall be withdrawn from command and from the line of promotion.

Status of retired officers.
Aug. 3, 1861, c. 42, s. 16, v. 12, p. 289; July 17, 1862, c. 200, s. 12, v. 12, p. 596. Sec. 1255, R. S.

1318. When any officer in the line of promotion is retired from active service, the next officer in rank shall be promoted to his place, according to the established rules of the service; and the same rule of promotion shall be applied, successively, to the vacancies consequent upon such retirement.

Vacancies caused by retirement.
Aug. 3, 1861, c. 42, s. 16, v. 12, p. 289.
Sec. 1257, R.S.

---

[1] The act of March 3, 1875, should be construed to have a prospective effect only. XIX Opin. Att. Gen., 610.

[2] The pay of retired officers is a matter within the control of Congress, and so is their rank. Wood *v.* U. S., 15 Ct. Cls., 151, and 107 U. S., 414. Officers retired from active service are retired "upon the actual rank held by them at the date of retirement." Remey *v.* U. S., 33 Ct. Cls., 218.

Rights and liabilities.
Aug. 3, 1861, c. 42, s. 18, v. 12, p. 290.
Sec. 1256, R.S.

1319. Officers retired from active service shall be entitled to wear the uniform of the rank on which they may be retired. They shall continue to be borne on the Army Register, and shall be subject to the rules and articles of war, and to trial by general court-martial for any breach thereof.[1]

Assignment to duty at Soldiers' Home.
Jan. 21, 1870, c. 9, s. 2, v. 16, p. 62; Apr. 6, 1870, Res. 32, v. 16, p. 372; Feb. 27, 1877, c. 69, v. 19, p. 243.
Sec. 1259, R.S.

1320. Retired officers of the Army may be assigned to duty at the Soldiers' Home, upon a selection by the commissioners of that institution, approved by the Secretary of War; and a retired officer shall not be assignable to any other duty: *Provided*, That they receive from the Government only the pay and emoluments allowed by law to retired officers.[2]

Ineligible for civil office in any Territory.
Mar. 3, 1883, v. 22, p. 567.
Sec. 1860, R.S.

1321. No person belonging to the Army or Navy shall be elected to or hold any civil office or appointment in any Territory, except officers of the Army on the retired list.[3]

Employment of retired officers in time of war.
Mar. 2, 1899, s. 7, v. 30, p. 979.

1322. In time of war retired officers of the Army may, in the discretion of the President, be employed on active duty, other than in the command of troops, and when so employed they shall receive the full pay and allowances of their grades. *Sec. 7, act of March 2, 1899 (30 Stat. L., 979).*

---

[1] A retired officer is subject to trial by court-martial, and a court-martial has jurisdiction of offenses committed after the officer was retired. Runkle *v.* U. S., 19 Ct. Cls., 396.

An officer on the retired list, being as much a part of the Army as any officer on the active list, would be subject to trial by general court-martial independently of the provision, specifically so subjecting him, of section 1256, Revised Statutes. Dig. Opin. J. A. G., par. 2200.

A retired officer, upon conviction, may be sentenced similarly to an officer on the active list, except that the punishments of suspension and loss of files or relative rank are not appropriate to the status of a retired officer. Ibid., note 2.

[2] A retired Army officer is not prohibited by law from holding office in an Executive Department, nor from receiving the salary thereof in addition to his retired pay. Collins *v.* U. S., 15 Ct. Cls. 22; Meigs *v.* U. S., 19 Ct. Cls., 497. A retired officer may be employed by the War Department. Yates *v.* U. S., 25 Ct. Cls., 296. Retired officers, as such, do not hold public office. They are in fact pensioners. The position and pay given them constitute a form of pension. They exercise no functions and receive no emoluments of office, but are pensioned for past faithful services or disabilities contracted in the line of duty. Their condition and public office have no characteristics in common. Dig. Opin. J. A. G., par. 2209. See in this connection the act of July 31, 1894 (28 Stat. L., 205), which permits retired officers to hold office to which they have been elected by the people or appointed by the President with the advice and consent of the Senate. See also section 7 of the act of June 3, 1896 (29 Stat. L., 235), which contains the requirement "that section 2 of the act of July 31, 1894 (28 Stat. L., 205), shall not be so construed as to prevent the employment of any retired officer of the Army or Navy to do work under the direction of the Chief of Engineers of the United States Army in connection with the improvement of rivers and harbors of the United States, or the payment by the proper officer of the Treasury of any amounts agreed upon as compensation for such employment." This provision operates to exempt from the terms of the act of July 31, 1894 (sec. 1763, R. S.), all retired officers of the Army or Navy who may be employed by the Engineer Department upon works of river and harbor improvement.

A retired officer of the Army "holds a lucrative office," and so is ineligible, under the constitution of Texas, to hold civil office in that State. State *v.* DeGress, 53 Texas, 387. See, also, Hill *v.* Territory, 2 Wash., 147.

[3] A retired officer of the Army is not ineligible to hold an appointment to a civil office. XIX Opin. Att. Gen., 283; XV ibid., 306; Meigs *v.* U. S., 19 Ct. Cls. 497; Converse *v.* U. S., 21 How., 464; U. S. *v.* Brindle, 110 U. S., 688; U. S. *v.* Saunders, 120 U. S., 126.

Adjutant-General of District militia. June 6, 1900, v. 31, p. 671.

1323. The President of the United States may detail as Adjutant-General of the District of Columbia Militia any retired officer of the Army who may be nominated to the President by the Brigadier-General commanding the District of Columbia Militia, said retired officer while so detailed to have the active service pay and allowances of his rank in the Regular Army. *Act of June 6, 1900 (31 Stat. L., 671).*

Holding two offices by persons receiving $2,500 forbidden. Sec. 2, July 31, 1894, v. 28, p. 205.

Retired officers excepted.

1324. No person who holds an office the salary or annual compensation attached to which amounts to the sum of two thousand five hundred dollars shall be appointed to or hold any other office to which compensation is attached unless specially heretofore or hereafter specially authorized thereto by law; but this shall not apply to retired officers of the Army or Navy whenever they may be elected to public office or whenever the President shall appoint them to office, by and with the advice and consent of the Senate. *Sec. 2, act of July 31, 1894 (28 Stat. L., 205).*

Clerks to retired officers prohibited. July 1, 1898, v. 30 p. 644..

1325. Hereafter no allowance or compensation for clerks or secretaries of officials of the United States retired from active service shall be authorized. *Act of July 1, 1898 (30 Stat. L., 644).*

RESIGNATIONS.

Leaving post on tender of resignation. 49 Art. War.

1326. Any officer who, having tendered his resignation, quits his post or proper duties, without leave, and with intent to remain permanently absent therefrom, prior to due notice of the acceptance of the same, shall be deemed and punished as a deserter.[1] *Forty-ninth Article of War.*

---

[1] A valid resignation and an unconditional acceptance of it, accompanied by proper notification of it, operate to remove an officer from the military service. Bennett *v.* U. S., 19 Ct. Cls. 379. And a new appointment is required to restore him to the office. XII Opin. Att. Gen., 555. An immediate and unconditional resignation severs, absolutely, an officer's connection with the Army. Turnley *v.* U. S., 24 Ct. Cls., 317. It has been held by a United States court that "a civil officer has a right to resign his office at pleasure, and it is not in the power of the Executive to compel him to remain in office." In a case of a military officer, however, this right is subject to certain restrictions growing out of the military status. Thus, while in time of peace, an officer of the Army, in good standing, is in general entitled to tender and have accepted his resignation, yet in time of war, or when grave embarrassment to the service or prejudice to discipline may result from his leaving his duty, the acceptance of his resignation may properly be refused. And so, where he has tendered his resignation while under charges, and a failure of justice might result from allowing him to evade trial. Dig. Opin. J. A. G., 662.

A military officer who has tendered his resignation, but who continues in service, doing actual duty, is entitled to pay up to the time he is notified of the acceptance of his resignation. Barger *v.* U. S., 6 Ct. Cls., 35; Dig. Opin. J. A. Gen., 662, 663.

A mere offer to resign or tender of resignation is revocable at any time before accept-

Accepting diplomatic or consular office.
Mar. 30, 1868, c. 38, s. 2, v. 15, p. 58.
Sec. 1223, R.S.

1327. Any officer of the Army who accepts or holds any appointment in the diplomatic or consular service of the Government shall be considered as having resigned his place in the Army, and it shall be filled as a vacancy.[1]

DISMISSAL.

Restoration of dismissed officers.
July 20, 1868, c. 185, v. 15, p. 125.
Sec. 1228, R.S.

1328. No officer of the Army who has been or may be dismissed from the service by the sentence of a general court-martial, formally approved by the proper reviewing authority, shall ever be restored to the military service, except by a reappointment confirmed by the Senate.[2]

---

ance. But after an acceptance, and before effect has been given to the same by notice, the offer can not be withdrawn, or materially modified by the act of the officer alone, but the consent of the appointing power is also necessary. Dig. Opin. J. A. G., 663.

A resignation to take effect at a future date may, with the consent of the appointing power, provided no new rights have intervened, be withdrawn before the time when the resignation was to take effect, and the officer will continue to be an officer *de jure* thereafter. 1 Compt. Dec., 8; Bunting *v.* Willis, 27 Gratt., 144; Biddle *v.* Willard, 10 Ind., 62; State *v.* Van Buskirk, 56 Mo., 17; People *v.* Porter, 6 Cal., 26. See, also, Badger *v.* U. S., 93 U. S., 599; U. S. *v.* Wright, 1 McLean, 509.

The acceptance of an officer's resignation becomes operative and severs him from the military service upon his receiving either actual or constructive notice of such acceptance. Dig. Opin. J. A. G., 663.

While a tender of his resignation by an insane officer is, in general, without legal effect, and incapable of being legally accepted, yet where a resignation so tendered was, in the absence, at the War Department, of any knowledge of his insanity, formally accepted, *held* that the acceptance could not be legally revoked, and that the appointment to the vacancy was valid and operative. Dig. Opin. J. A. G., 663. When an officer tenders his resignation, and the question of his sanity is passed upon by his commanding officer, and it is by him determined that he is of sane mind, a court can not reexamine the question. Blake *v.* U. S., 13 Ct. Cls. 402.

Where an officer appointed during a recess of the Senate, after taking the oath of office, and notifying the Department of his acceptance, is ordered to return the appointment, his obeying the order is not a resignation. O'Shea *v.* U. S., 28 Ct. Cls., 392.

An officer who places his conditional resignation in the hands of his commanding officer, to be forwarded by that officer upon a breach of the said condition, of which breach such commanding officer is to be the judge, and authorizes him to insert a date in such resignation and to forward it for acceptance, is held to have made a valid tender of his resignation, and, upon its acceptance by the President, such officer ceases to be an officer of the Army. Mimmack *v.* U. S., 97 U. S., 426, 436; XII Opin. Att. Gen., 555.

If an officer's connection with the service has been legally severed by resignation, dismissal, or otherwise, he can again enter only by the appointment of the President, with the consent of the Senate. Montgomery *v.* U. S., 19 Ct. Cls., 338; Miller *v.* U. S., ibid., 338; Mimmack *v.* U. S., 97 U. S., 426; McElrath *v.* U. S., 102 U. S., 426; Blake *v.* U. S., 103 U. S., 227; Keyes *v.* U. S., 109 U. S., 336, 339.

[1] The act of March 30, 1868, 15 Stat. L., 58, which is embodied in section 1223 of the Revised Statutes, applied to officers on the retired as well as on the active list, and it made the acceptance of the diplomatic vacate the military office *eo instanti;* the vacancy thus created necessarily continuing until filled in the usual way. XIX Opin. Att. Gen., 610.

[2] Dismissal by Executive order is quite distinct from dismissal by sentence. The latter is a *punishment;* the former is *removal from office.* The power to *dismiss*, which, as being an incident to the power to appoint public officers, had been regarded since 1789 as vested in the President by the Constitution, was for the first time, by section 5 of the act of July 13, 1886 (reenacted in the second clause of the present ninety-ninth article of war and in section 1229, Revised Statutes), expressly divested by Congress, in so far as respects its exercise in time of peace. By the statute it is now authorized only in time of war. Dig. Opin. J. A. G., par. 1203.

The practical results of this statute, in connection with other provisions of law bearing upon the subject, are these: That in time of war the President may dismiss

Officers dropped for desertion.
Art. of War 99.
Art. of War 106.
July 15, 1870, c. 294, s. 17, v. 16, p. 319; July 13, 1866, c. 176, s. 5, v. 14, p. 92.
Sec. 1229, R.S.

1329. The President is authorized to drop from the rolls of the Army for desertion any officer who is absent from duty three months without leave; and no officer so dropped shall be eligible for reappointment. And no officer in the military or naval service shall in time of peace be dismissed from service except upon and in pursuance of the sentence of a court-martial to that effect, or in commutation thereof.[1]

Officers dismissed by President may demand trial.

1330. When any officer, dismissed by order of the President,[2] makes, in writing, an application for trial, setting

---

an officer from service at any moment and for any cause; that in time of peace he may dismiss him for cause, with the cooperation of a court-martial; or remove him without cause with the consent of the Senate. Street *v.* U. S., 24 Ct. Cls., 248; Blake *v.* U. S., 103 U. S., 227; McElrath *v.* U. S., 102 U. S., 426; Fletcher *v.* U. S., 26 Ct. Cls., 541.

The President has the power to remove an officer of the Army by the appointment of another in his place, by and with the advice and consent of the Senate, and such power is not withdrawn by the provisions of section 5 of the act of July 13, 1866 (section 1229, Revised Statutes), and this provision does not restrict the power of the President, by and with the advice and consent of the Senate, to displace officers of the Army and Navy by the appointment of others in their places. Keyes *v.* U. S., 109 U. S., 336, 339; Blake *v.* U. S., 103 U. S., 227; McElrath *v.* U. S., 103 U. S. 426; Mimmack *v.* U. S., 97 U. S., 426; U. S. *v.* Corson, 114 U. S., 619; Montgomery *v.* U. S., 19 Ct. Cls., 370; Bonnett *v.* U. S., ibid., 379; Palen *v.* U. S., ibid., 389; McBlair *v.* U. S., ibid., 528; Vanderslice *v.* U. S., ibid., 480; XV Opin. Att. Gen., 407.

[1] The jurisdiction to find and determine the fact of desertion, under this section, is vested in the President alone, and his decision thereon can not be reviewed by the courts. Newton *v.* U. S., 18 Ct. Cls., 435. The discharge of an officer does not relieve the Government from its obligations until he is notified of the fact and actually discharged from service. Gould *v.* U. S., 19 Ct. Cls., 593. A summary dismissal of an officer does not properly take effect until the order of dismissal or an official copy of the same is delivered to him, or he is otherwise officially notified of the fact of his dismissal. Dig. Opin. J. A. G., par. 1204. A dismissal of an officer by Executive order does not operate to disqualify him for reappointment to military office, or for appointment to civil office under the United States. Ibid, 370, par. 7.

[2] Dismissal by Executive order is quite distinct from dismissal by sentence. The latter is a *punishment:* the former is *removal from office.* The power to dismiss, which, as being an incident to the power to *appoint* public officers, had been regarded since 1789 as vested in the President by the Constitution, was, for the first time in 1866 (by the act of July 13th of that year, re-enacted in the second clause of the present 99th Article of War and in sec. 1229, Revised Statutes), expressly divested by Congress in so far as respects its exercise in time of peace. By the statute law it is now authorized only in time of war. During the late war it was exercised in a great number of cases, sometimes for the purpose of summarily ridding the service of unworthy officers, sometimes in the form of a discharge or muster out of officers whose services were simply no longer required. The distinction between this species of dismissal and dismissal by sentence is illustrated by the fact that the former has, with the sanction of legal authority, been repeatedly ordered in cases where a court-martial has previously *acquitted* the officer of the very offenses on account of which the summary action has been resorted to. Dig. Opin. J. A. Gen., par. 1203. See also VII Opin. Att. Gen., 251; Commonwealth *v.* Bussier, 5 Sergt. & Rawle, 461; *Ex parte* Hennen, 13 Peters, 258, 259; United States *v.* Guthrie, 17 Howard, 307; IV Opins. of Attys. Gen., 1, 609–613; VI Id., 5–6; VII Id., 251; VIII Id., 230–232; XII Id., 424–426; Sergeant's Const. Law, 373; 2 Story's Cons., § 1537, note; 1 Kent's Coms., 310; 2 Marshall's Washington, 162.

The Executive, in summarily dismissing an officer, can not at the same time deprive him of pay due. Nor can the right of an officer to his pay for any period prior to a summary dismissal ordered in his case be divested by a dating back of the order of dismissal. Such an order can not be made to relate back so as to affect the status or rights of the officer as they existed before the date of the taking effect of the dismissal. Dig. Opin. J. A. G., par. 1213.

Mar. 3, 1865, c. 79, s. 12, v. 13, p. 489; June 22, 1874, c. 392, s. 2, v. 18. p. 192. **Sec. 1230, R.S.**

forth, under oath, that he has been wrongfully dismissed, the President shall, as soon as the necessities of the service may permit, convene a court-martial, to try such officer on the charges on which he shall have been dismissed. And if a court-martial is not so convened within six months from the presentation of such application for trial, or if such court, being convened, does not award dismissal or death as the punishment of such officer, the order of dismissal by the President shall be void.[1]

MISCELLANEOUS PROVISIONS RESPECTING COMMISSIONED OFFICERS.

Par.
1331. Officers not to be employed on civil works, etc.
1332. Accepting civil office.
1333. Details as Indian agents.
Par.
1334. Discharge of supernumerary officers.
1335. Enlisted men not to be used as servants.

Duties upon which officers of the Army are not to be employed. Feb. 27, 1877, v. 19, p. 243. **Sec. 1224, R. S.**

1331. No officer of the Army shall be employed on civil works or internal improvements, or be allowed to engage in the service of any incorporated company, or be employed as acting paymaster or disbursing agent of the Indian Department, if such extra employment requires that he shall be separated from his company, regiment, or corps, or if it shall otherwise interfere with the performance of the military duties proper. *Act of February 27, 1877* (*19 Stat. L., 243*).

---

[1] This statute was held by the Attorney-General (XII Opins., 4) not to be unconstitutional, in that it was not "obnoxious to the objection that it invades or frustrates the power of the President to dismiss an officer." More serious objections to its constitutionality are believed to be: 1, that it authorizes the subjecting to military trial of a civilian; 2, that in restoring an officer to the Army it substitutes the action of a court-martial for the appointing power of the President.

The statute does not indicate within what period after the dismissal the application for a trial should be made. It can only be said that, in preferring it, due diligence should be exercised—that it should be presented within a reasonable time. *Held*, That a party who (without any sufficient excuse) delayed for *nine* years to apply for a trial under the statute might well be regarded as having waived his right thereto. [IV Opin. Att. Gen., 170; V Ibid., 384.] It could scarcely have been contemplated by Congress that a dismissed officer should be at liberty to defer his application for a trial till the evidence on which he was dismissed or a material part of the same had ceased to exist, and his restoration would thus be made certain. Dig. Opin. J. A. G., par. 1219.

Though it may be sufficient that the application made under the statute should state simply that the applicant has been "wrongfully" dismissed, the preferable form would be for the applicant to set forth *in what* the alleged wrong consisted. Ibid., par. 1220.

To take advantage of the benefit conferred by this section the officer must apply for trial within a reasonable time after dismissal, or acquiescence will be presumed. A delay of nine years in a particular case held to create such presumption of acquiescence. Newton *v.* U. S., 18 Ct. Cls., 435; Germaine *v.* U. S., 26 ibid., 383.

Where the President is authorized by law to reinstate a discharged army officer, he may do so without the advice and consent of the Senate. Collins *v.* U. S., 15 Ct. Cls., 22. For a list of officers so reinstated see Collins Case, 14 Ct. Cls., 568, 571.

Accepting or holding civil office.
July 15, 1870, c. 294, s. 18, v. 16, p. 319.
Sec. 1222, R. S.

1332. No officer of the Army on the active list shall hold any civil office, whether by election or appointment, and every such officer who accepts or exercises the functions of a civil office shall thereby cease to be an officer of the Army, and his commission shall be thereby vacated.[1]

Army officers to be detailed as Indian agents.
July 13, 1892, v. 27, p. 120.

1333. That from and after the passage of this act the President shall detail officers of the United States Army to act as Indian agents at all agencies where vacancies from any cause may hereafter occur, who, while acting as such agents, shall be under the orders and direction of the Secretary of the Interior, except at agencies where, in the opinion of the President, the public service would be better promoted by the appointment of a civilian.[2] *Act of July 13, 1892 (27 Stat. L., 120).*

Supernumerary officers may, on their own request, be discharged with certain pay.
June 30, 1882, v. 22, p. 118.

1334. That any officer who is supernumerary to the permanent organization of the Army as provided by law may, at his own request, be honorably discharged from the Army, and shall thereupon receive one year's pay for each five years of his service, but no officer shall receive more than three years' pay in all. *Act of June 30, 1882 (22 Stat. L., 118).*

Enlisted men not to be used as servants.
Sec. 1232, R.S.

1335. No officer shall use an enlisted man as a servant in any case whatever. July 15, 1870, c. 294, s. 14, v. 16, p. 319.

TRAVEL PAY ON DISCHARGE.

Travel pay to officers on discharge.
Mar. 2, 1901, v. 31, p. 902.

1336. Hereafter when an officer shall be discharged from the service, except by way of punishment for an offense, he shall receive for travel allowances from the place of his discharge to the place of his residence at the time of his appointment or to the place of his original muster into the service four cents per mile from the place of his discharge to the place of his enlistment, enrollment, or original muster into the service.[3] *Act of March 2, 1901 (31 Stat. L., 902).*

---

[1] Where an officer of the Army was tendered a place on a "board of experts" created by a city ordinance to determine the most durable and best pavement for the streets of a city, advised that, in view of the provisions of section 1222 of the Revised Statutes, the place be not accepted by the officer. XVIII Opin. Att. Gen., 11.

[2] See, for other provisions of law respecting the detail of officers as Indian agents, the chapters entitled THE INDIANS; INDIAN AGENTS; THE INDIAN COUNTRY. For other enactments authorizing the employment of officers on the active list on civil or nonmilitary duty, see sections 4653, 4664, and 4671, Revised Statutes, authorizing the detail of officers on light-house duty; the act of July 31, 1882, 22 Stat. L., 181, authorizing the detail of an officer for duty in connection with Indian education; section 5 of the act of August 1, 1890, 26 ibid., 337, authorizing the detail of an officer as a member of the Chickamauga Park Commission; and the several statutes authorizing college details, see paragraphs 1288 to 1295, *ante*.

[3] For statutes and regulations regulating the payment of travel allowances on discharge to officers and enlisted men see the chapter entitled THE PAY DEPARTMENT.

The same. *Ibid.* **1337.** Any officer or enlisted man in the service of the United States who was discharged in the Philippine Islands and there reentered the service through commission or enlistment shall, when discharged, except by way of punishment for an offense, receive for travel allowances from the place of his discharge to the place in the United States of his last preceding appointment or enlistment, or to his home if he was appointed or enlisted at a place other than his home, four cents per mile.[1] *Ibid.*

Sea travel. *Ibid.* **1338.** For sea travel on discharge actual expenses only shall be paid to officers and transportation and subsistence only shall be furnished to enlisted men.[1] *Ibid.*

DECEASED OFFICERS.

Effects of deceased officers. 125 Art. War. **1339.** In case of the death of any officer, the major of his regiment, or the officer doing the major's duty, or the second officer in command at any post or garrison, as the case may be, shall immediately secure all his effects then in camp or quarters, and shall make, and transmit to the office of the Department of War, an inventory thereof.[2] *One hundred and twenty-fifth Article of War.*

---

[1] For statutes and regulations regulating the payment of travel allowances on discharge to officers and enlisted men see the chapter entitled THE PAY DEPARTMENT.

[2] The death of an officer, with place, cause, day, and hour, will be reported without delay by his immediate commander direct to the Adjutant-General of the Army. A duplicate of this report will be forwarded to department headquarters. When the death occurs away from the officer's station, in hospital or on leave, the medical officer, if one be present, or any officer having cognizance of the fact, will make the report. Par. 93, A. R., 1901.

Inventories of the effects of deceased officers, as required by the One hundred and twenty-fifth Article of War, will be transmitted to the Adjutant-General of the Army. If legal representatives take possession of the effects, the fact will be stated in the inventory. Par. 94, ibid.

If there be no legal representatives present to receive the effects, a list of them will be sent to the nearest relative of the deceased. At the end of two months, if not called for, they will be sold at auction and accounted for as in the case of deceased soldiers, except that swords, watches, trinkets, and similar articles will be labeled with the name, rank, regiment, and date of death of the owner, and sent through the Adjutant-General to the Auditor for the War Department for the benefit of the heirs. Par. 96, ibid.

Where an officer dies who is responsible for public property or funds, their dispotion is provided for by the following provisions of Army Regulations: "On the death of an officer in charge of public property or funds, his commanding officer will appoint a board of survey, which will inventory the same, and make the customary returns therefor, stating accurately amounts and condition. These the commanding officer will forward to the chiefs ot the bureaus to which the property or funds pertain, and he will designate an officer to take charge of such property or funds until orders in the case are received from the proper authority." Par. 97, ibid.

FUNERAL EXPENSES.

The annual acts of appropriation since that of June 12, 1858 (11 Stat. L., 333), have contained a provision for the expenses of interment "of officers killed in action or who die when on duty in the field or at military posts, or when on the frontiers, or when traveling under orders." Act of February 12, 1895, 128 Stat. L., 659. For

1340. Officers charged with the care of the effects of deceased officers or soldiers shall account for and deliver the same, or the proceeds thereof, to the legal represent-

Officers charged with effects to account for same.
127 Art. War.

---

the act of March 3, 1899 (30 Stat. L., 1225), authorizing certain expenditures in connection with the transportation and burial of the remains of officers who die in the field or at military camps, or who are killed in action, or who die in the field at places outside the limits of the United States, see paragraph 1417 *post.* See, also, the acts of May 26, 1900 (31 Stat. L., 212), and March 3, 1901 (ibid., 1172).

The disposition of the remains of deceased officers and the payment of funeral expenses are provided for in the following regulation: "The remains of officers killed in action, or who die when on duty in the field or at military posts, or when traveling under orders, will be decently inclosed in coffins, and unless claimed by relatives or friends, will be transported by the Quartermaster's Department to the nearest military post or national cemetery for burial. The expense of transporting the remains is payable from the appropriation for Army transportation; other expenses of burial are limited to $75. If buried at the place of death, the fact will be reported to the Adjutant-General of the Army." Par. 85., A. R., 1895. (Par. 99, A. R., 1901.)

The expenses of burial of deceased officers other than transportation of the remains, which under the law is payable from the appropriation for "Army transportation," limited to $75 by paragraph 85 of the Regulations, and of enlisted men, limited to $35 by paragraph 162 of the Regulations, as amended by General Orders, No. 141, September 12, 1898, from this office, will be limited to the cost of the coffin and the reasonable and necessary expense of preparation of the remains for burial, and will not include such items as: For guarding remains, expense of services of clergyman or minister, music by band or choir, flowers, cost or hire of pall to be used with horse, tombstone, crape or gloves for pallbearers, and expense of grave site where the remains are sent home at the request of relatives. *Decision Sec. War, April 3, 1900, Circular No. 9, A. G. O., 1900.*

There is no authority of law for the payment of mileage on account of the transportation of the remains of a deceased officer of the Army. Such payment would be illegal and could not properly be allowed by the accounting officers. Under section 2, act of July 21, 1894 (19 Stat. L., 100), mileage ceased to accrue at the point where, and the time when, by reason of death, an officer ceases to be an officer of the Army. There is nothing in section 1 of the act of September 19, 1890 (26 Stat. L., 456), which is in conflict with this view. 3 Compt. Dec., 209.

Held, that the regulation allowance for the expenses of the interment of an officer, as fixed by paragraph 99, Army Regulations, 1901, was not payable in the case of an officer who, at the time of his death, was on sick leave, this being not one of the cases specified in the Army appropriation acts in which such allowance is authorized to be paid. Dig. Opin. J. A. G., par. 1954. Similarly *held* in the case of an officer who died at the Hot Springs, Ark., when not on duty but on leave of absence. Ibid. *Held, further*, that, under the provisions on the subject of the Army appropriation act of February 27, 1893, such expenses could not be allowed for the interment of an officer dying at a military post unless he was on duty there at the time of his death, and therefore could not be legally allowed in the case of an officer who deceased at a post where he was staying while on sick leave of absence from his station in another military department. Ibid., par. 1955.

So *held*, under the act of March 3, 1899 (30 Stat. L., 1225), as to an officer who died on furlough. VI, Compt. Dec., 444.

Held, that the fact that an officer had been interred at the post where he died did not preclude the Secretary of War from having authorized his permanent interment elsewhere, provided the entire expenses of burial did not exceed the maximum amount of $75 allowed for such purposes by paragraph 99, Army Regulations of 1901. Dig. Opin. J. A. G., par. 1955.

Paymasters, in making prepayments of salary to officers of the Army, are liable for any portion unearned by the officer on account of death, or otherwise; also for any final indebtedness of said officer to the Government, to the extent of said prepayment. 3 Compt. Dec., 10.

Balances due from the United States to deceased persons are payable at the Treasury, and not by disbursing officers. Second Compt., sec. 676; Scott Dig., 260.

A balance due to a deceased military officer upon his pay account becomes on his death part of his personal estate, and may be set off by the accounting officers upon an indebtedness due from him to the Government. Mumford *v.* U. S., 31 Ct. Cls., 210. Money granted to a widow by statute cannot be set off against an indebtedness due from her husband to the Government. Ibid.

atives of such deceased officers or soldiers. And no officer so charged shall be permitted to quit the regiment or post until he has deposited in the hands of the commanding officer all the effects of such deceased officers or soldiers not so accounted for and delivered. *One hundred and twenty-seventh Article of War.*

Reimbursement of expense of burial.
May 26, 1900, v. 31, p. 212.

1341. In all cases where they would have been lawful claims against the Government reimbursement may be made of expenses heretofore or hereafter incurred by individuals of burial and transportation of remains of officers, including acting assistant surgeons, not to exceed what is now allowed in the cases of officers.[1] *Act of May 26, 1900 (31 Stat. L., 212).*

---

[1] The act of March 2, 1901 (31 Stat. L., 905), contains a provision authorizing expenses of interment of "officers killed in action or who die when on duty in the field, or at military posts or on the frontiers, or when traveling under orders, and of noncommissioned officers and soldiers."

CHAPTER XXVIII.

BREVETS—MEDALS OF HONOR—CERTIFICATES OF MERIT—FOREIGN DECORATIONS.

Par.
1342. Brevet rank.
1343. The same, when authorized.
1344, 1345. The same, date.
1346. Brevet rank, honorary.
1347. Assignment to duty.
1348. The same, when made.
1349. Uniform.
1350. To be addressed by actual rank.
1351. Uniform of highest volunteer rank.

Par.
1352, 1353. The same, regular rank.
1354. Foreign decorations.
1355. The same, restriction as to use.
1356, 1357. Medals of honor.
1358. Certificates of merit.
1359. The same, pay.
1360–1363. Corps badges, insignia of societies.

BREVETS.

Brevet commissions.
Sec. 1209, R. S.
July 6, 1812, v. 2, p. 785; Apr. 16, 1818, v. 3, p. 427; Mar. 1, 1869, v. 15, p. 281.

1342. The President, by and with the advice and consent of the Senate, may in time of war confer commissions by brevet upon commissioned officers of the Army for distinguished conduct and public service in presence of the enemy.[1]

Brevets authorized for gallantry, Indian campaigns.
Feb. 27, 1890, v. 26, p. 13.

1343. The President of the United States * * * is hereby authorized and empowered, at his discretion, to nominate and, by and with the advice and consent of the Senate, to appoint to brevet rank all officers of the United States Army now on the active or retired list who by their department commander, and with the concurrence of the Commanding General of the Army, have been or may be recommended for gallant service in action against hostile Indians since January first, eighteen hundred and sixty-seven. *Sec. 1, act of February 27, 1890 (26 Stat. L., p. 13).*

Date of brevet commission.
Mar. 1, 1869, c. 52, s. 2, v. 15, p. 281.
Sec. 1210, R. S.

1344. Brevet commissions shall bear date from the particular action or service for which the officers were brevetted.

To date from passage of this act.
Date of heroic service.
Sec. 2, *ibid.*

1345. Such brevet commissions as may be issued under the provisions of this act shall bear date only from the passage of this act: *Provided, however,* That the date of the particular heroic act for which the officer is promoted shall appear in his commission. *Sec. 2, ibid.*

---

[1] Brevet rank can properly neither be conferred nor take effect except as an incident to full rank of a lower grade. Dig. Opin. J. A. G., par. 608.

Brevet rank to be strictly honorary.
Sec. 3, *ibid.*

1346. Brevet rank shall be considered strictly honorary, and shall confer no privilege of precedence or command not already provided for in the statutes which embody the rules and articles governing the Army of the United States. *Sec. 3, ibid.*

Effect of assignment.
Apr. 16, 1818, c. 64, s. 1, v. 3, p. 427; Mar. 3, 1869, c. 124. s. 7, v. 15, p. 318.
Sec. 1211, R. S.

1347. Officers may be assigned to duty or command according to their brevet rank by special assignment of the President; and brevet rank shall not entitle an officer to precedence or command except when so assigned.[1]

Assignment to duty, etc.; when made.
Mar. 3, 1883, v. 22, p. 457.

1348. Officers of the Army shall only be assigned to duty or command according to their brevet rank when actually engaged in hostilities.[2] *Act of March 3, 1883 (22 Stat. L., 457).*

Uniform of actual rank to be worn.
July 15, 1870, c. 294, s. 16, v. 16, p. 319.
Sec. 1212, R. S.

1349. No officer shall be entitled, on account of having been brevetted, to wear, while on duty, any uniform other than that of his actual rank.

To be addressed in orders by title of actual rank.
Ibid.

1350. No officer shall be addressed in orders or official communications by any title other than that of his actual rank.

UNIFORM OF HIGHEST VOLUNTEER RANK.

Officers may wear uniform of highest volunteer rank.
July 28, 1866, c. 299, s. 34, v. 14, p. 337.
Sec. 1226, R. S.

1351. All officers who have served during the rebellion as volunteers in the Army of the United States, and have been honorably mustered out of the volunteer service, shall be entitled to bear the official title, and, upon occasions of ceremony, to wear the uniform of the highest grade they have held, by brevet or other commissions, in the volunteer service. The highest volunteer rank which has been held by officers of the Regular Army shall be entered, with their names, respectively, upon the Army Register. But these privileges shall not entitle any officer to command, pay, or emoluments.

---

[1] In view of the repeal by the act of March 1, 1869 (15 Stat. L., 318), of the old sixty-first article of war (which did away also with the portion of paragraph 10 of the Army Regulations of 1863 which was derived therefrom), an officer, except where specially assigned to duty according to his brevet rank by the President, is no longer entitled to precedence on courts-martial or otherwise by reason of his brevet rank. Dig. Opin. J. A. G., par. 609. See also XVII, Opin. Att. Gen., 39.

Under section 1211, Revised Statutes, an officer may legally be assigned to duty according to his brevet rank for a special command or duty, and in such case the assignment will not be effective generally, but only for the purposes of such command or duty and during its continuance. Thus *held*, that an officer assigned to duty according to his brevet rank "while in command of" a certain department, could legally exercise the authority and privileges of such rank only when holding such command, and for the purposes of the same. Ibid., par. 611.

[2] When an officer has been duly assigned to duty or command according to a certain brevet rank, that rank becomes his actual military rank for the period of the assignment. He is empowered to exercise the authority which belongs to such rank under the circumstances, to wear the uniform, and to be addressed by the title of such rank, etc. *Held*, however, that a colonel, assigned to command according to a brevet rank of general, was not entitled to the aids-de-camp of a general (major or brigadier), but, as indicated in paragraph 40, Army Regulations, 1901, could be "allowed" the same only "with the special sanction of the War Department"—in other words, by the authority of the Secretary of War. Ibid., par. 612.

Officers may wear uniform of highest regular rank.
Feb. 4, 1897, v. 29, p. 511.

1352. All officers who have served during the rebellion as officers of the Regular Army of the United States, and have been honorably discharged or resigned from the service, shall be entitled to wear the official title, and, upon occasions of ceremony, to wear the uniform of the highest grade they have held, by brevet or other commission, as is now authorized for officers of volunteers by section twelve hundred and twenty-six, Revised Statutes. *Act of February 4, 1897 (29 Stat. L., 511).*

The same. War with Spain.
Feb. 2, 1901, s. 34, v. 31, p. 757.

1353. All officers who have served during the war with Spain, or since, as officers of the Regular or Volunteer Army of the United States, and have been honorably discharged from the service, by resignation or otherwise, shall be entitled to bear the official title, and, upon occasions of ceremony, to wear the uniform of the highest grade they have held by brevet or other commission in the regular or volunteer service. *Sec. 34, act of February 2, 1901 (31 Stat. L., p. 757.)*

FOREIGN DECORATIONS.

Foreign decorations not to be worn.
Jan. 31, 1881, s. 2, v. 21, p. 80.

1354. That no decoration, or other thing the acceptance of which is authorized by this act, and no decoration heretofore accepted, or which may hereafter be accepted, by consent of Congress, by any officer of the United States, from any foreign government, shall be publicly shown or exposed upon the person of the officer so receiving the same. *Sec. 2, act of January 31, 1881 (21 Stat. L., 80).*

Decorations, etc., how tendered.
Sec. 3, *ibid.*

1355. That hereafter any present, decoration, or other thing which shall be conferred or presented by any foreign government to any officer of the United States, civil, naval, or military, shall be tendered through the Department of State, and not to the individual in person, but such present, decoration, or other thing shall not be delivered by the Department of State unless so authorized by act of Congress. *Sec. 3, ibid.*

MEDALS OF HONOR.

Medals of honor.
Mar. 3, 1863, s. 6, v. 12, p. 751.
J. R. 51, May 2, 1896, v. 29, p. 473.

1356. That the President cause to be struck, from the dies recently prepared at the United States Mint for that purpose, "medals of honor" additional to those authorized by the act (resolution) of July 12, 1862, and present the same to such officers, noncommissioned officers, and privates as have most distinguished, or may hereafter most distinguish themselves in action.[1] *Sec. 6, act of March 3, 1863.*

Rosette, or knot, and ribbon.

1357. The Secretary of War * * * is hereby authorized to issue to any person to whom a medal of honor has been awarded, or may hereafter be awarded, under the provisions of the joint resolution approved July twelfth, eighteen hundred and sixty-two, and the act approved March third, eighteen hundred and sixty-three, a rosette or knot to be worn in lieu of the medal, and a ribbon to be worn with the medal; said rosette, or knot, and ribbon to be each of a pattern to be prescribed and established by the President of the United States; and any appropriation that may hereafter be available for the contingent expenses of the War Department is hereby made available for the purposes of this act: *Provided*, That whenever a ribbon issued under the provisions of this act shall have been lost, destroyed, or rendered unfit for use, without fault or neglect on the part of the person to whom it is issued, the Secretary of War shall cause a new ribbon to be issued to such person without charge therefor. *Joint Resolution No. 51, May 2, 1896 (29 Stat. L., 473).*

New ribbon.

CERTIFICATES OF MERIT.

Certificate of merit.

1358. When any enlisted man of the Army shall have distinguished himself in the service the President may, at the recommendation of the commanding officer of the regiment or the chief of the corps to which such enlisted man belongs, grant him a certificate of merit.[1] *Act of March 29, 1892 (27 Stat. L., 12).*

---

[1] This provision was not embraced in the Revised Statutes. Medals of honor will be awarded by the President to officers and men who most distinguish themselves in action. (Par. 177, A. R., 1895; see also G. O. 42, A. G. O., 1897, and G. O. 135, A. G. O., 1899.)

The original enactments of 1862 and 1863, providing for the award of medals of honor, and appropriating moneys for the expenses of the same, evidently contemplated a personal presentation to the selected recipient. Such is also inferably the design of the present Army Regulations, wherein (Art. XXV) the medal of honor is assimilated to the certificate of merit, each being manifestly intended to honor and distinguish the recipient in person. *Held* therefore that (except by special authority of Congress) a medal of honor could not legally be awarded to the widow, or a member of the family, of a deceased officer, on account of distinguished service in action performed by the latter during his lifetime. (Dig. Opin. J. A. G., par. 1655.)

Par. 175, A. R., 1901, like the provision upon which it is based, of the act of March 3, 1863, is deemed to contemplate, in a case of an award to an officer, that the person shall be a commissioned officer of the Army at the time of the award. A contract or acting assistant surgeon is not, and was not at any time, such a commissioned officer. *Held* therefore that a medal of honor could not legally be awarded to a person for alleged distinguished service rendered while serving in the field as an acting assistant surgeon in 1864, who moreover had had no connection with the Army since 1865. (Ibid., par. 1656; see also XX Opin. Att. Gen., 421.)

Mar. 3, 1847, c. 61. s. 17, v. 9, p. 186; Aug. 4, 1854, c. 247, s. 3, v. 10, p. 575; Feb. 9, 1891, v. 26, p. 737; Mar. 29, 1892, v. 27, p. 12. Sec. 1216, R. S.

Extra pay. Sec. 1285, R. S.

1359. A certificate of merit granted to an enlisted man for distinguished service shall entitle him, from the date of such service, to additional pay at the rate of two dollars per month while he is in the military service, although such service may not be continuous.[1] *Sec. 2, act of February 9, 1891 (26 Stat. L., 737).*

Feb. 9, 1891, s. 2, v. 26, p. 737.

CORPS BADGES AND INSIGNIA OF SOCIETIES.

Army corps badges. July 25, 1868, Public Res. No. 73, v. 15, p. 261. Sec. 1227, R. S.

1360. All persons who have served as officers, noncommissioned officers, privates, or other enlisted men in the Regular Army, volunteer or militia forces of the United States, during the war of the rebellion, and have been honorably discharged from the service or still remain in the same, shall be entitled to wear, on occasions of ceremony, the distinctive Army badge ordered for or adopted by the Army corps and division, respectively, in which they served.

Military society badges may be worn by Army and Navy. J. R. No. 50, Sept. 25, 1890, v. 26, p. 681.

1361. That the distinctive badges adopted by military societies of men who served in the armies and navies of the United States in the war of the Revolution, the war of eighteen hundred and twelve, the Mexican war, and the war of the rebellion, respectively, may be worn upon

---

[1] *Held*, under section 1216, Revised Statutes, as amended by the act of February 9, 1891, as follows: 1. A certificate of merit may now be granted to "any enlisted man of the Army," noncommissioned officer as well as private.(*a*) 2. It may be granted for distinguished conduct prior to the date of the act of February 9, 1891, as well as since.(*b*) 3. The grantee must belong to a regiment. 4. While the recommendation of the regimental commander is necessary, this recommendation may be based upon any fact or facts deemed by him to justify it, such as the recommendation of the company commander or any other officer (whether of the regiment or not) cognizant of the circumstances of the case, or upon any other authentic information brought to his (the regimental commander's) knowledge. 5. That the declaration of paragraph 197, Army Regulations, 1901, that the recommendation "must originate with an eye witness," is an interpolation not autnorized nor called for by the original statute (sec. 1216, R. S.), or by the recent amendment of 1891, and an instance of *quasi* legislation unwarranted in an army regulation. Dig. Opin. J. A. G., par. 668.

Held, under section 1216, construed in connection with section 1285, Revised Statutes, that the President was authorized to grant a certificate of merit only to a soldier belonging at the time of the grant to a regiment of the Army; that he was not empowered to grant such a certificate to a discharged soldier and civilian on account of services rendered while he was a soldier.(*c*) Ibid., par. 667.

---

a In Bell *v.* U. S., 28 Ct. Cls., 462, it was held that a soldier to whom, when a member of an infantry regiment, had been granted a certificate of merit, was entitled to continue to receive the additional pay after reenlisting in the "general messenger service."

b See McNamara *v.* U. S., 28 Ct. Cls., 416, where it is held that the act of February 9, 1891, is retroactive, and entitles the beneficiary to the additional pay from the date of the service for which the certificate was awarded.

c See, to a similar effect, the opinion of the Attorney-General in XVI Opins., 9; also the subsequent G. O. 28, Hdqrs. of Army, 1878.

LIBRARY OF THE UNIVERSITY

all occasions of ceremony by officers and enlisted men of the Army and Navy of the United States who are members of said organizations in their own right. *Joint resolution No. 50, of September 25, 1890 (26 Stat. L., 681).*

Badge of Regular Army and Navy Union may be worn.
J. R. No. 26, May 11, 1894, v. 28, p. 583.

1362. That the distinctive badge adopted by the Regular Army and Navy Union of the United States may be worn, in their own right, upon all public occasions of ceremony by officers and enlisted men in the Army and Navy of the United States who are members of said organization. *Joint resolution No. 26, of May 11, 1894 (28 Stat. L., 583).*

The same.
War with Spain.
Feb. 2, 1901, s. 41, v. 31, p. 758.

1363. The distinctive badges adopted by military societies of men who served in the armies and navies of the United States during the Spanish-American war and the incident insurrection in the Philippines may be worn, upon all occasions of ceremony, by officers and men of the Army and Navy of the United States who are members of said organizations in their own right. *Sec. 41, act of February 2, 1901 (31 Stat. L., 758).*

CHAPTER XXIX.

ENLISTED MEN.

Par.
1364–1375. Enlistment, reenlistment.
1376, 1377. Transfers.
1378. Furloughs.
1379–1382. Retirement.
1383–1390. Discharge.
1391, 1392. Travel pay on discharge.
1393. Absence without leave.
1394, 1395. Desertion.
1396–1404. Statutory consequences of desertion.
Par.
1405, 1406. Aiding, enticing, persuading to desert.
1407–1410. Apprehension of deserters, rewards.
1411. Statute of limitation in desertion.
1412, 1413. Miscellaneous provisions.
1414, 1415. Deceased enlisted men.
1416–1418. Expenses of burial.

ENLISTMENT AND REENLISTMENT.

Par.
1364, 1365. General qualifications, age.
1366. The same, citizenship.
1367. Enlistment of minors.
1368, 1369. Prohibited enlistments.
1370. Term of enlistment.
Par.
1371. Premium for recruits.
1372. Fraudulent enlistment.
1373. Reenlistment.
1374. The same, pay.
1375. Period for reenlistment extended.

1364. Recruits enlisting in the Army must be effective and able-bodied men, and between the ages of eighteen and thirty-five years, at the time of their enlistment.[1] This limitation as to age shall not apply to soldiers reenlisting.

General qualifications.
Mar. 16, 1802, c. 9, s. 11, v. 2, p. 134; Mar. 3, 1815, c. 79, s. 7, v. 3, p. 224; July 5, 1838, c. 162, s. 30, v. 5, p. 260; Feb. 13, 1862, c. 25, s. 2, v. 12, p. 339; June 21, 1862, Res. 37, v.12, p. 620; July 17, 1862, c. 200, s. 21, v. 12, p. 597; Feb. 27, 1893, v. 27, p. 486; Mar. 2, 1899, s. 4, v. 30, p. 978. **Sec. 1116, R. S.**

1365. The limits of age for original enlistments in the Army shall be eighteen and thirty-five years. *Sec. 4, act of March 2, 1899 (30 Stat. L., 978).*

Limits of age.
Mar. 2, 1899, s. 4, v. 30, p. 978.

---

[1] The requirements of section 1116, Revised Statutes, in respect to the limits of age for recruits upon their original enlistment into the military service have been modified by the act of February 27, 1893 (27 Stat. L., 486), which established the superior limit at thirty years in time of peace, and by section 4 of the act of March 2, 1899 (30 Stat. L., 978), which fixes the limits of age for original enlistments at from eighteen to thirty-five years.

Enlistment is a contract, but it is one of those contracts which changes the status, and where that is changed no breach of contract destroys the new status or relieves from the obligations which its existence imposes. * * * By enlistment the citizen becomes a soldier. His relations to the State and the public are changed. He acquires a new status, with correlative rights and duties, and although he may violate his contract obligations, his status as a soldier is unchanged. He can not of his own

Age, citizenship.
Aug. 1, 1894, s. 2, v. 28, p. 215; Mar. 2, 1899, s. 4, v. 30, p. 978.

1366. In time of peace no person (except an Indian) who is not a citizen of the United States, or who has not made legal declaration of his intention to become a citizen of the United States, or who can not speak, read, and write the English language, or who is over thirty-five years of age, shall be enlisted for the first enlistment in the Army.[1] *Sec. 4, act of March 2, 1899 (30 Stat. L., 978).*

Enlistment of minors.
May 15, 1872, c. 162, s. 1, v. 17, p. 117.
Sec. 1117, R. S.

1367. No person under the age of twenty-one years shall be enlisted or mustered into the military service of the United States without the written consent of his parents or guardians: *Provided*, That such minor has such parents or guardians entitled to his custody and control.

Persons not to be enlisted.
Mar. 2, 1833, c. 68, s. 6, v. 4, p. 647; July 4, 1864, c. 237, s. 5, v. 13, p. 380; Mar. 3, 1865, c. 79, s. 18, v. 13, p. 490; Feb. 27, 1877, c. 69, v. 19, p. 242.
Sec. 1118, R. S.

1368. No minor under the age of sixteen years, no insane or intoxicated person, no deserter from the military service of the United States, and no person who has been convicted of a felony shall be enlisted or mustered into the military service.[2]

---

volition throw off the garments he has once put on, nor can he, the State not objecting, renounce his relations and destroy his status on the plea that, if he had disclosed truthfully the facts, the other party, the State, would not have entered into the new relations with him or permitted him to change his status. U. S. *v.* Grimley, 137 U. S., 147.

Our law not defining enlistment, nor designating what proceeding or proceedings shall or may constitute an enlistment, it may be said, in general, that any act or acts which indicate an undertaking, on the part of a person legally competent to do so, to render military service to the United States for the term required by existing law, and an acceptance of such service on the part of the Government, may ordinarily be regarded as legal evidence of a contract of enlistment between the parties and as equivalent to a formal agreement where no such agreement has been had. The forty-seventh article of war practically makes the receipt of pay by a party as a soldier evidence of an enlistment on his part, estopping him from denying his military capacity when sought to be made amenable as a deserter. The continued rendering of service which is accepted may constitute an enlistment. But enlistments in our Army are now almost invariably evidenced by a formal writing and engagement under oath. Dig. Opin. J. A. G., 384, par. 1. See also In re McDonald, 1 Lowell, 100.

An enlistment is the act of making a contract to serve the Government in a subordinate capacity either in the Army or the Navy. Erichson *v.* Beach, 40 Conn., 283. An enlistment is not a contract only, but effects a change of status. In re Grimley, 137 U. S., 151. The statutes employ the term "enlist" only with reference to contracts with persons who enter the Army as privates, and to certain other classes of men, like Indian scouts and hospital stewards, who rank like soldiers, and voluntarily put themselves under military law. Babbitt *v.* U. S., 16 Ct. Cls., 214.

[1] Any male citizen of the United States, or person who has legally declared his intention to become a citizen, if above the age of twenty-one and under the age of thirty-five years, able-bodied, free from disease, of good character and temperate habits, may be enlisted under the restrictions contained in this article. In regard to age or citizenship this regulation shall not apply to soldiers who have served honestly and faithfully a previous enlistment in the Army. Par. 921, A. R., 1901. See also circular of June 3, 1898, from the Adjutant-General's Office for qualifications for volunteer recruits.

[2] Sections 1116, 1117, and 1118, Revised Statutes, providing that deserters, convicted felons, insane or intoxicated persons, and certain minors shall not be enlisted are regarded as directory only, and not as making necessarily void such enlistments, but as rendering them voidable merely, at the option of the Government. In cases of such enlistments, except of course where the party, by reason of mental derangement or drunkenness was without the legal capacity to contract, the Government may elect to hold the soldier to service, subject to any application for discharge which may be addressed by himself or his parent, etc., either to the Secretary of War or to a United

Enlistment of minors prohibited.
3 Art. War.

1369. Every officer who knowingly enlists or musters into the military service any minor over the age of sixteen [eighteen] years without the written consent of his parents or guardians, or any minor under the age of sixteen years, or any insane or intoxicated persons, or any deserter from the military or naval service of the United States, or any person who has been convicted of any infamous criminal offense shall, upon conviction, be dismissed from the service, or suffer such other punishment as a court-martial may direct. *Third Article of War. Sec. 4, act of March 2, 1899 (30 Stat. L., 978).*

Term of enlistment.
Qualifications for reenlistment.
Sec. 2, Aug. 1, 1894, v. 28, p. 216.

1370. That hereafter all enlistments in the Army shall be for the term of three years, and no soldier shall be again enlisted in the Army whose service during his last preceding term of enlistment has not been honest and faithful.[1]

Premium for recruit.
June 21, 1862, Res. 37, v. 12, p. 620.
Sec. 1120, R.S.

1371. A premium of two dollars shall be paid to any citizen, noncommissioned officer, or soldier for each accepted recruit he may bring to a recruiting rendezvous.[2]

Fraudulent enlistment.
Sec. 3, July 27 1892, v. 27, p. 278.

1372. Fraudulent enlistment, and the receipt of any pay or allowance thereunder, is hereby declared a military offense and made punishable by court-martial, under the sixty-second article of war. *Sec. 3, act of July 27, 1892 (27 Stat. L., 278).*

REENLISTMENT.

Reenlistment.
Sec. 3, Aug. 1, 1894, v. 28, p. 216.
Sec. 1282, R.S.

1373. All enlisted men mentioned in section twelve hundred and eighty who, having been honorably discharged, have reenlisted or shall reenlist within three months

---

States court. Dig. Opin. J. A. G., 385, par. 3. See, also, U. S. *v.* Grimley, 137 U. S., 147, cited in note to paragraph 1364, *ante.*

The enlistment contract of a minor is void when the recruit is under 16, with or without the consent of the parent. In re Lawler, 40 F. R., 233. It is not void, but voidable only, as to minors between 16 and 21. U. S. *v.* Morrissey, 137 U. S., 157. It is not voidable at the instance of the minor. Ibid. It is voidable at the instance of the parent or guardian. Com. *v.* Blake, 8 Phil., 523; Turner *v.* Wright, 5 ibid., 296; Menges *v.* Camac., 1 Serg. and R., 87; Henderson *v.* Wright, ibid., 299; Seavey *v.* Seymour, 3 Cliff., 439; In re Cosenow, 37 F. R., 668; In re Hearn, 32 ibid., 141; In re Davison, 21 ibid., 618; U. S. *v.* Wagner, 24 ibid., 135; In re Dohrendorf, 40 F. R., 148; In re Spencer, ibid., 149; In re Lawler, ibid., 233; In re Wall, 8 ibid., 85.

A minor's contract of enlistment is voidable, not void, and is not so voidable at the instance of the minor. If, after enlistment, he commits an offense, is actually arrested, and in course of trial before the contract is duly avoided, he may be tried and punished. In re Wall., 8 Fed. Rep., 85; see also Barrett *v.* Hopkins, 7 ibid., 312.

[1] The contract of enlistment is an entirety. If service for any portion of the time is criminally omitted the pay and allowances for faithful services are not earned. Lander *v.* U. S., 92 U. S., 77.

As to what constitutes faithful service within the meaning of this statute, see note to paragraph 1373, *post.* This section operates to repeal section 1119, Revised Statutes, and section 2 of the act of June 16, 1890 (26 Stat. L., 187), which fixed the term of enlistment in the Army at five years.

[2] This statute is practically obsolete. It was last applied during the rebellion of 1861–1865 against the United States.

thereafter, shall after five years' service, including their first enlistment, be paid at the rate allowed in said section to those serving in the fifth year of their first enlistment.[1]

Additional pay.
Sec. 3, Aug. 1, 1894, v. 28, p. 216.
Sec. 1284, R.S.

1374. Every soldier who, having been honorably discharged, reenlists within three months thereafter, shall be further entitled after five years service, including his first enlistment, to receive for the period of five years next thereafter two dollars per month in addition to the ordinary pay of his grade; and for each successive period of five years of service so long as he shall remain continuously in the Army a further sum of one dollar per month. The past continuous service of soldiers now in the Army shall be taken into account and shall entitle such soldier to additional pay according to this rule; but services rendered prior to August fourth, eighteen hundred and fifty-four, shall in no case be accounted as more than one enlistment.[1]

Period extended to three months.
Sec. 3, Aug. 1, 1894, v. 28, p. 216.

1375. That the period within which soldiers may reenlist with the benefits conferred by sections twelve hundred and eighty-two and twelve hundred and eighty-four of the Revised Statutes, be, and the same is hereby, extended to three months; and hereafter every enlisted man in the Army, * * * shall be entitled to all the benefits conferred by sections twelve hundred and eighty-one and twelve hundred and eighty-two of the Revised Statutes.

Continuous service.

Provided, That to entitle them to the additional pay authorized by section twelve hundred and eighty-one, for men serving in the third, fourth, and fifth years, the service must have been continuous within the meaning of this section.[1] *Sec. 3, act of August 1, 1894 (28 Stat. L., 216)*

---

[1] The additional pay given to soldiers by this section does not depend upon mere length of service, but upon two other conditions—an honorable discharge and a voluntary reenlistment. Webb *v.* U. S., 23 Ct. Cls., 58. It is intended, primarily, to be an inducement to the prompt reenlistment of an honorably discharged soldier, and it can be earned in no other way. Ibid.

The act of June 16, 1890 (26 Stat. L., 157), contained the provision "that the Secretary of War shall determine what misconduct shall constitute a failure to render honest and faithful service within the meaning of this act. But no soldier who has deserted at any time during the term of an enlistment shall be deemed to have served such term honestly and faithfully." Under the authority conferred by this statute the Secretary of War has decided that in the following cases there has been a failure to render honest and faithful service:

(1) Desertion.

(2) When the soldier is in confinement under a general court-martial sentence expressly imposing imprisonment until or beyond the expiration of his term; when discharged under sentence of general court-martial; when discharged by order from the War Department specifying forfeiture, or because of imprisonment by the civil authority.

(3) When the soldier is discharged for minority concealed at enlistment, or for other cause involving fraud in enlistment, or for disability caused by his misconduct.

(4) Upon the approved finding of a board of officers, called under paragraph 148, that the soldier has not served honestly and faithfully to the date of discharge.

The cause of forfeiture will be stated on the muster and pay rolls and on the final statements of the soldier.

TRANSFER OF ENLISTED MEN.[2]

1376. Any person enlisted in the military service of the United States may, on application to the Navy Department, approved by the President, be transferred to the Navy or Marine Corps, to serve therein the residue of his term of enlistment, subject to the laws and regulations for the government of the Navy. But such transfer shall not release him from any indebtedness to the Government, nor, without the consent of the President, from any penalty incurred for a breach of military law.

Transfer from military to naval service. July 1, 1864, c. 201, s. 1, v. 13, p. 342. **Sec. 1421, R.S.**

1377. Any enlisted man in the Army shall be eligible for transfer to the Hospital Corps as a private. *Sec. 5, Act of March 1, 1887 (24 Stat. L., 435).*

Transfers to Hospital Corps. Mar. 1, 1887, s. 5, v. 24, p. 435.

FURLOUGHS TO ENLISTED MEN.

1378. Every officer commanding a regiment or an independent troop, battery, or company, not in the field, may, when actually quartered with such command, grant furloughs to the enlisted men, in such numbers and for such time as he shall deem consistent with the good of the service. Every officer commanding a regiment, or an independent troop, battery, or company, in the field, may

Furloughs. **11 Art. War.**

---

[1] This section repeals and replaces the requirement of the act of February 27, 1893 (27 Stat. L., 486), "that hereafter, in time of peace no recruit shall be enlisted in the Army for the first time who is over 30 years of age, and no private shall be reenlisted who has served ten years or more, or who is over 35 years of age, except such as have already served as enlisted men for twenty years or upward."

[2] TRANSFER OF ENLISTED MEN.

Transfers of enlisted men will be made for cogent reasons only. They will be effected as follows:

(1) From one company to another of the same regiment, not involving change of station, by the colonel. In cases involving change, then by the colonel with the consent of the department commander if change of station is within department limits.

(2) From one regiment to another, and between companies of the same regiment serving in different military departments, by the Commanding General of the Army.

(3) In all other cases, by the Secretary of War. Par. 125, A. R., 1901.

DETACHED SOLDIERS.

Enlisted men detached from their companies will be provided with descriptive lists showing the pay due them, the condition of their clothing allowance, and all information necessary to the settlement of their accounts with the Government should they be discharged. When it can be avoided, the descriptive list will not be intrusted to the soldier, but to an officer or noncommissioned officer, under whose charge he may be serving, or it may be forwarded by mail. The immediate commanding officer will note upon the descriptive lists the date and result of the last vaccination of each soldier. Par. 115, ibid.

grant furloughs, not exceeding thirty days at one time, to five per centum of the enlisted men, for good conduct in the line of duty, but subject to the approval of the commander of the forces of which said enlisted men form a part. Every company officer of a regiment, commanding any troop, battery, or company not in the field, or commanding in any garrison, fort, post, or barrack, may, in the absence of his field officer, grant furloughs to the enlisted men, for a time not exceeding twenty days in six months, and not to more than two persons to be absent at the same time.[1] *Eleventh Article of War.*

---

[1] Furloughs in the prescribed form for periods of twenty days may be granted to enlisted men by commanding officers of posts, or by regimental commanders if the companies to which they belong are under their control. A furlough will not be granted to a soldier about to be discharged. Par. 116, A. R., 1901

Corps or department commanders may grant furloughs to enlisted men, sergeants of the post noncommissioned staff excepted, for two months, and the Commanding General of the Army for four months, or they may extend to such periods furloughs already granted. For a longer period than four months the authority of the Secretary of War is necessary. Permission to delay may be granted to enlisted men traveling under orders as authorized for furloughs. The conditions under which furloughs to soldiers on reenlistment are authorized will be announced from time to time in orders. Par. 117, ibid; G. O., 23, A. G. O., 1899.

Furloughs to sergeants of the post noncommissioned staff or to enlisted men acting as such may be granted as follows: By a post commander for seven days, in case of emergency only; by a department commander for one month. Application for furlough for a longer period will be forwarded to the Adjutant-General of the Army for the decision of the Secretary of War. Par. 119, ibid.

Furloughs will not be granted by commanding officers permitting soldiers to go beyond the limits of the next higher command. To enable them to pass such limits the sanction of higher authority must be obtained and indorsed on the furloughs. The approval of the Secretary of War must be obtained to allow an enlisted man on furlough to leave the United States. The limits prescribed will be stated in the furlough, and if exceeded it may be revoked and the soldier arrested. A company commander in forwarding an application for furlough will state previous absences on furlough and the authority therefor. Par. 120, ibid.

On the application of a soldier on furlough, made at the nearest military station and showing clearly the urgency of his case, a department commander may order transportation and subsistence to be furnished to enable him to rejoin his proper station, and the company commander will charge the cost thereof against the soldier's pay on the next muster and pay roll, in accordance with paragraphs 1203 and 1422. The date of the application will be entered on the furlough. Par. 121, ibid.

A soldier who has returned from furlough to the station from which furloughed, his company having in his absence changed station, is entitled to transportation at the expense of the Government to the new station of his company. Par. 111, ibid., 1895.

Soldiers on furlough will not take with them their arms or accouterments, and no payments will be made to them without authority from the Secretary of War. Par. 124, ibid. For orders in respect to sick furloughs to enlisted men of the volunteer forces see G. O., 114, 121, 130, 134, 139, 148, 168, 170, 173, and 175, A. G. O., 1898; Circulars 34, 39, 41, and 48, A. G. O., 1898.

Section 2 of the act of June 16, 1890 (26 Stat. L., 157), contained the requirement that "at the end of three years from the date of his enlistment every soldier whose antecedent service has been faithful shall be entitled to receive a furlough for three months, and that in time of peace he shall at the end of such furlough be entitled to receive his discharge upon his own application: *Provided further*, That soldiers discharged under the provisions of this section shall not be entitled to the allowances provided in section twelve hundred and ninety of the Revised Statutes." See, however, in this connection section 2 of the act of August 1, 1894 (paragraph 1370, *ante*), which reduced the length of the term of enlistment in time of peace to three years. Section 2 of the act of June 16, 1890, ceased to be operative as to furloughs on August 1, 1897, and as to discharges at expiration of furlough on November 1, 1897.

THE RETIREMENT OF ENLISTED MEN.

Par.
1379. Retirement after thirty years' service.
1380. War service.
1381. Foreign service.
1382. Allowance for subsistence, etc.

1379. When an enlisted man has served as such thirty years in the United States Army or Marine Corps, either as private or noncommissioned officer, or both, he shall by application to the President be placed on the retired list hereby created, with the rank held by him at the date of retirement, and he shall receive thereafter seventy-five per centum of the pay and allowances of the rank upon which he was retired. *Act of February 14, 1885 (23 Stat. L., 305).*

Retirement of enlisted men after thirty years' service.

Feb. 14, 1885, v. 23, p. 305; Sep. 30, 1890, v. 26, p. 504.

1380. If said enlisted man had war service with the Army in the field, or in the Navy or Marine Corps in active service, either as volunteer or regular, during the war of the rebellion, such war service shall be computed as double time in computing the thirty years necessary to entitle him to be retired.[1] *Act of September 30, 1890 (26 Stat. L., 504).*

War service, etc., to be computed as double time.

Sept. 30, 1890, v. 26, p. 504.

---

[1] The act of February 14, 1885 (23 Stat. L., 305), which created the retired list for enlisted men, was amended by the act of September 30, 1890 (26 Stat. L., 504), by the addition of the proviso permitting war service during the war of the rebellion to be computed as double time in computing the thirty years' service necessary to entitle him to be retired.

An enlisted man on the retired list is subject to trial by court-martial, and to dishonorable discharge by sentence, if such be adjudged. But the existing law, in entitling him to be retired if he complies with its conditions, evidently contemplates that he shall remain a pensioner on the bounty of the Government during the remainder of his life, if not forfeiting his claim by serious misconduct. So, held that retired enlisted men could not legally be discharged by Executive order under the Fourth Article of War, which contemplates soldiers on the active list only. Dig. Opin. J. A. G., par. 2218.

Held, in the absence of any legislation to the contrary, that retired enlisted men, like retired officers, might legally be employed in any Department of the Government as clerks, messengers, watchmen, etc., and receive pay for such employment, while at the same time retaining their positions on the retired list and receiving retired pay. Dig. Opin. J. A. G., par. 2219.

The act of February 14, 1885 (23 Stat. L., 305), entitles a retired enlisted man to three-fourths of his service ration. He is not entitled to commutation for things which, in active service, he enjoys only in common with others, such as medicine, medical services, fuel, and quarters. McKenna *v.* U. S., 23 Ct. Cls, 308.

The authorized pay and allowances of retired enlisted men will be paid them monthly by the Pay Department. Their pay will be three-fourths of the monthly pay allowed them by law in the grade held when retired, including reenlisted and continuous-service pay then received. No deduction will be made except the monthly tax of 12½ cents for the support of the Soldiers' Home. They are not entitled to commutation for fuel or quarters, but will receive commutation for subsistence and clothing as follows:

For subsistence.—At the rate of 22½ cents per day.

For clothing.—Three-fourths of the average annual allowance prescribed in orders for an entire enlistment in the grade from which retired, one-twelfth of such amount to be paid monthly. The allowance of clothing to chief musicians is the same as that to quartermaster-sergeants. Par. 149, A. R., 1901.

It has been held by the Secretary of War that the term "war service," as used in the act of September 30, 1890, shall include service rendered as a commissioned offi-

Foreign service.
May 26, 1890, v. 31, p. 211.

1381. Hereafter, in computing length of service for retirement, credit shall be given the soldier for double the time of his actual service in Porto Rico, Cuba, or in the Philippine Islands. *Act of May 26, 1900 (31 Stat. L., 211).*

Allowance for subsistence and clothing.
Mar. 16, 1896, v. 29, p. 62.

1382. Hereafter a monthly allowance of nine dollars and fifty cents shall be granted in lieu of the allowance for subsistence and clothing. *Act of March 16, 1896 (29 Stat. L., 62).*

DISCHARGE OF ENLISTED MEN.

Par.
1383. Discharges, by whom given.
1384. Jurisdiction after dishonorable discharge.
1385. Discharge for disability.
1386. Discharge by purchase.
Par.
1387. Discharge for dependency of parent.
1388, 1389. Duplicate certificate of discharge.
1390. The same, return of certificate.

Discharge of enlisted men.
4 Art. War.

1383. No enlisted man, duly sworn, shall be discharged from the service without a discharge in writing, signed by a field officer of the regiment to which he belongs, or by the commanding officer, when no field officer is present; and no discharge shall be given to any enlisted man before his term of service has expired, except by order of the President, the Secretary of War, the commanding officer of a department, or by sentence of a general court-martial.[1] *Fourth Article of War.*

---

cer, and that, for the purposes of this statute, the war began on April 15, 1861, and ended on April 2, 1866, as respects all theaters of operation, except the State of Texas, and as to that State that the war ended on April 20, 1866. Circular No. 2, 11 H. Q. A., March 10, 1891.

Upon the retirement of an enlisted man from active service he is entitled to transportation in kind to the place of his enlistment or to his home. Section 1290, Revised Statutes, does not apply to enlisted men transferred to the retired list, in that they are not discharged. 3 Dig. 2nd Compt. Dec., par. 874; U. S. *v.* Tyler, 105 U. S., 244.

[1] An enlisted man will not be discharged before the expiration of his term except:

1. By order of the President or Secretary of War.
2. By sentence of a general court-martial.
3. On certificate of disability, by direction of the commander of a territorial department or army in the field; but when the disability of a soldier is caused by disease contracted before enlistment, or by his own misconduct or bad habits, discharge will be ordered only by the Secretary of War.
4. In compliance with an order of one of the United States courts, or a justice or a judge thereof, on a writ of habeas corpus. Par. 151, A. R., 1901.

The act of March 16, 1896 (29 Stat. L., 63), contains the requirement "that no enlisted man discharged by order of the Secretary of War for disability caused by his own misconduct shall be entitled to the travel allowances provided for in section 1290 of the Revised Statutes."

When an enlisted man is discharged, his company commander will furnish him with final statements in duplicate or a full statement in writing of the reasons why such final statements are not furnished. Final statements will not be furnished a soldier who has forfeited all pay and allowances and has no deposits due him. When the discharge is made on certificate of disability, the ascertained disability as recited in the certificate must be given in the final statements as the reason or cause for discharge. Par. 152, A. R., 1901.

When an enlisted man is discharged by expiration of service, his discharge will take effect on the last day thereof; i. e., if enlisted on the second day of the month

1384. Soldiers sentenced by court-martial to dishonorable discharge and confinement[1] shall, until discharged from such confinement, remain subject to the Articles of War and other laws relating to the administration of military justice. *Sec 5, act of June 18, 1898 (30 Stat. L., 484).*

Jurisdiction after dishonorable discharge.
June 18, 1898, 5, v. 30, p. 484. s.

1385. No enlisted man discharged by order of the Secretary of War for disability caused by his own misconduct hall be entitled to the travel allowances provided for in section 1290 of the Revised Statutes. *Act of March 16, 1896 (29 Stat. L., 63).*

Discharge for disability due to misconduct.
Mar. 16, 1896, v. 29, p. 63.

---

his term will expire on the first day of the same month in the last year of his term of enlistment. Par. 154, ibid.

For provisions of regulations respecting the discharge of enlisted men see paragraphs 151–170, Regulations of 1901.

[1] DISHONORABLE DISCHARGE.

A dishonorable discharge from the service is a complete expulsion from the Army and covers all unexpired enlistments. Par. 168, A. R., 1901.

A dishonorable discharge is a discharge expressly imposed as a punishment by sentence. Such a discharge is held also to be *involved* in a sentence "to be drummed out of the service." It is only by a sentence that a dishonorable discharge can be authorized. Being a *punishment*, it cannot be prescribed by an Order. In a case of this discharge, the word "dishonorably" is inserted before the word "discharged" in the certificate, and it is added that the discharge is given pursuant to the sentence of a certain general court-martial, specifying it by reference to the order by which it was constituted. Dig. Opin. J. A. G., 361, par. 25.

Held that an executed dishonorable discharge was an absolute expulsion from the Army, and as such did not merely terminate the particular enlistment, but covered all previous unexecuted enlistments of the soldier, if any. A soldier sentenced to a dishonorable discharge, duly approved and executed, can not be made amenable for a desertion committed under a prior enlistment. Ibid., par. 26.

The discharge of a soldier, discharged not by reason of the expiration of his term of enlistment, but under a sentence of court-martial, should be dated as of the day on which the approval of the sentence is officially published, or the order promulgating such approval is received, at the post where the soldier is held. It is to that date that he is to be paid, if pay is due him. Ibid., 359, par. 16.

The formal *certificate of discharge*, furnished in blank by the Adjutant-General (see par. 151, A. R.), is, when duly made out and signed, legal evidence of the fact of discharge, and of the circumstances therein stated, under which it was given. The certificate is not a *record*, and its statements are not conclusive upon the Government when contradicted by record or other better evidence. Dig. Opin. J. A. G., 358, par. 13.

The discharge furnished to the soldier, or for him, takes effect, like a deed, upon delivery. The delivery should be personal, unless, at its date, the soldier is in confinement awaiting trial or under sentence; in such case the delivery may be constructive, the certificate being committed to the commander of the company, post, etc., to be retained by him for the soldier until released from arrest or imprisonment, and then rendered to him personally. This is the recognized practice; the delivery to the commander being deemed tantamount to actual delivery. Ibid., par. 14.

A soldier should not be furnished with his formal discharge on the day of the expiration of his term if he is then awaiting sentence of court-martial. No soldier in such a status can be entitled to his discharge till the result of his trial be published. Ibid., 359, par. 15.

Any form of discharge other than such as is prescribed in the fourth Article of War is irregular and inoperative (unless indeed otherwise authorized by subsequent statute). Mere desertion does not operate as a discharge of a soldier; he may then be dropped from the rolls of his command, but he is in no sense discharged from the Army. Nor can an official publication, in orders, of a sentence of dishonorable discharge have the effect of discharging a soldier; there must still be a notice, actual, as by the delivery of the formal discharge certificate, or constructive, of the formal discharge. A soldier can not discharge himself by simply leaving the service at the

DISCHARGE BY PURCHASE.

Discharge by purchase.
Sec. 4, June 16, 1890, v. 26, p. 157.

1386. That in time of peace the President may, in his discretion and under such rules and upon such conditions as he shall prescribe, permit any enlisted man to purchase his discharge from the Army. The purchase money to be paid under this section shall be paid to a paymaster of the Army and be deposited to the credit of one or more of the current appropriations for the support of the Army, to be indicated by the Secretary of War, and be available for the payment of expenses incurred during the fiscal year in which the discharge is made.[1] *Sec. 4, act of June 16, 1890 (26 Stat. L., 157).*

---

expiration of his term. The final statements required by paragraph 141, A. R., to be furnished with the discharge, constitute no part of the discharge; the discharge is complete without them. Ibid., par. 17.

Discharge certificates will not be made in duplicate. Upon satisfactory proof of the loss of a discharge or of its destruction without the fault of the party entitled to it, the War Department may issue to such party a certificate of service, showing date of enlistment in and discharge from the Army and character given on discharge certificate. Discharge certificates must not be forwarded to the War Department in correspondence unless called for. Par. 155, A. R., 1901.

Blank forms for discharge and final statements will be furnished by the Adjutant-General of the Army, and will be retained in the personal custody of company commanders; those for discharge will be of three classes: For honorable and for dishonorable discharge and for discharge without honor. They will be used as follows:

(1) The parchment discharge blank, for honorable discharge only, and the word "honorably" will be interlined in the old blanks when used.

(2) The blank for dishonorable discharge, for such discharge alone.

(3) The blank for discharge without honor when a soldier is discharged:

(*a*) Without trial, on account of fraudulent enlistment.

(*b*) Without trial, on account of having become disqualified for service, physically or in character, through his own fault.

(*c*) On account of imprisonment under sentence of a civil court.

(*d*) On account of being at the expiration of his term of enlistment in confinement under the sentence of a general court-martial which does not provide for dishonorable discharge.

(*e*) When discharge without honor is specially ordered by the Secretary of War for any other reason. Par. 167, ibid.

An enlisted man remains in service until receipt of his discharge, or until such action is taken as will render him legally chargeable with notice thereof, notwithstanding the expiration of his term of enlistment during his absence on a furlough granted at his own request. 2 Compt. Dec., 94.

[1] Under section 4 of the act of June 16, 1890, the President may, in his discretion, permit a soldier to purchase his discharge, even if his service has not been faithful. This section does not, as do section 1 (relating to pay) and section 2 (relating to discharge and furlough), prescribe as a condition to receive its benefits that the antecedent service shall have been "faithful." Dig. Opin. J. A. G., p. 362, par. 32.

The act of June 16, 1890, section 4, leaves it to the President, "in his discretion," to determine the amount to be paid for the discharge, the time of payment, etc., and, indeed, whether the purchase shall be permitted at all. But it specifically declares that the money when paid "shall be paid to a paymaster of the Army;" and, in view of this express provision, *held* that payments could not legally be made to post, regimental, company, or other commanders. The paymaster, a bonded official, is appointed to receive payment in the first instance and thereupon make the deposit directed in the act. Ibid., par. 33.

Held that there was no legal authority for the refunding, by the military authorities, of money paid to purchase a discharge under the act of June 16, 1890. This clearly appears from the terms of the act, which provides that the money, when

DISCHARGE FOR DEPENDENCY OF PARENT.

Dependency of parent.
Feb. 2, 1901, s. 30, v. 31, 756.

1387. In the event of the enlistment of a soldier in the Army for the period required by law, and after the expiration of one year of service should either of his parents die, leaving the other solely dependent upon the soldier for support, such soldier may, upon his own application, be honorably discharged from the service of the United States upon due proof being made of such condition to the Secretary of War. *Sec. 30, act of February 2, 1901 (31 Stat. L., 756).*

---

paid, "shall be deposited in the Treasury" to the credit of some current appropriation, to be designated by the Secretary of War, to be "available for the payment of expenses incurred during the fiscal year in which the discharge is made." The act moreover authorizes the President to permit such purchases "under such rules and upon such conditions as he shall prescribe," and nothing is found in the rules actually prescribed (in General Orders 81, 108 of 1890, 48 of 1891, 32 of 1892, or 17 of 1893) which contemplates or refers to the refunding of such purchase money. Ibid., par. 1174.

In time of peace a soldier serving in the second year or first six months of the third year of his first enlistment may apply to the Adjutant-General of the Army through military channels for the privilege of purchasing his discharge, but such application will not be entertained unless based on satisfactory reasons fully set forth by the applicant and verified by the officer forwarding the application, nor unless accompanied by a statement of the soldier's immediate commanding officer showing the condition of his accounts. If such application be granted the purchase price will be entered on the final statements as an item due the United States. A soldier once discharged by purchase will not be granted that favor a second time. A soldier serving in the second or any enlistment, but not receiving continuous service or reenlisted pay, is not debarred from discharge by purchase. The price of purchase in the first month of the second year will be $120, and will be $5 less in each succeeding month of the period during which purchase may be authorized. Par. 156, A. R., 1901.

Enlisted men who have served meritoriously twelve years or more, continuously or otherwise, will be classified as veteran soldiers. If it be for their material benefit, discharge may be granted them by the Secretary of War by way of favor as veterans. A soldier once discharged as a veteran will not be discharged again by way of favor. Par. 157, ibid.

Soldiers discharged as provided in paragraph 156 will not receive travel allowances. Par. 158, ibid.

A soldier who has obtained his discharge by purchase under the provisions of section 4, act of June 16, 1890, is not entitled to recover the money paid for said discharge in pursuance of law. 2 Compt. Dec., 546. The accounting officers have no authority to review the action of the War Department refusing to discharge the soldier for disability and requiring him to purchase his discharge as a condition precedent to his release from service. 2 Compt. Dec., 546. See also pars. 936 and 1547, A. R., 1901; circ. 13, A. G. O., 1895; circ. 7, A. G. O., 1896, and circs. 38 and 40, A. G. O., 1898.

DISCHARGE FOR DISABILITY.

When an enlisted man is permanently unfitted for military service because of wounds or disease, he should, if practicable, be discharged on certificate of disability before the expiration of the term of service in which the disability was incurred. Blank forms will be furnished by the Adjutant-General of the Army, and the directions thereon will be strictly complied with. Par. 171, A. R., 1901.

When physical disability does not appear to be permanent, was incurred in line of duty, and benefit may be expected from a change of climate, a report of the case will be forwarded for the action of the Commanding General of the Army. The soldier will not be transferred to another company. In cases likely to be benefited by treatment in the Army and Navy General Hospital at Hot Springs, Ark., the application required by the regulations for admission thereto will be made. A

DUPLICATE CERTIFICATES OF DISCHARGE.

Loss of certificate of discharge. Mar. 3, 1873, c. 248, s. 1, v. 17, p. 582. Sec. 224, R. S.

1388. Whenever satisfactory proof is furnished to the War Department that any noncommissioned officer or private soldier who served in the Army of the United States in the late war against the rebellion has lost his certificate of discharge, or the same has been destroyed without his privity or procurement, the Secretary of War shall be authorized to furnish, on request, to such noncommissioned officer or private a duplicate of such certificate of discharge, to be indelibly marked, so that it may be known as a duplicate; but such certificate shall not be accepted as a voucher for the payment of any claim against the United States for pay, bounty, or other allowance, or as evidence in any other case.[1]

Discharge certificates, etc., in true name. Apr. 14, 1890, v. 26, p. 55.

1389. That the Secretary of War and the Secretary of the Navy be, and they are hereby, authorized and required to issue certificates of discharge or orders of acceptance of resignation, upon application and proof of identity, in the true name of such persons as enlisted or served under assumed names, while minors or otherwise, in the Army and Navy during the war of the rebellion and were honorably discharged therefrom. Applications for said certificates of discharge or amended orders of resignation may be made by or on behalf of persons entitled to them; but no such certificate or order shall be issued where a name was assumed to cover a crime or to avoid its consequence.[1] *Act of April 14, 1890* (*26 Stat. L.*, *55*).

---

record of cases transferred under the foregoing provisions, with a report of results, will be forwarded to the Surgeon-General at the end of each calendar year. Par. 172, ibid.

When an application for discharge is approved, the post or regimental commander will furnish to the surgeon by whom the certificate was given, or to the senior surgeon of the command to which the soldier was attached at the time of his discharge, a letter setting forth the full name and rank ot the soldier, the company and regiment to which he belonged, the date of discharge, and the cause thereof as stated in the certificate. The surgeon, having made a true copy of the letter for the completion of his own records, will forward the original to the Surgeon-General direct. Par. 173, ibid.

When there is a probable case for pension, special care will be taken to state in the certificate the degree of disability, to describe particularly the disability, wound, or disease, the extent to which it deprives the soldier of the use of any limb or faculty, or affects his health, strength, activity, constitution, or capacity to labor. Par. 174, ibid.

[1] Discharge certificates will not be made in duplicate. Upon satisfactory proof of the loss of a discharge, or of its destruction without the fault of the party entitled to it, the War Department may issue to such party a certificate of service, showing date of enlistment in and discharge from the Army and character given on discharge certificate. Discharge certificates must not be forwarded to the War Department in correspondence unless called for. Par. 155, A. R., 1901.

The dicharge certificates authorized to be issued under the provisions of these statutes is not to be confounded with the certificate denominated a "deserter's release," the issue of which is authorized in certain cases by G. O. 55, A. G. O., 1890 (26 Stat. L., 54). See note to paragraph 1411, *post.*

1390. In all cases where it has become necessary for any officer or enlisted man of the Army to file his evidence of honorable discharge from the military service of the United States to secure the settlement of his accounts, the accounting officer with whom it has been filed shall, upon application by said officer or enlisted man, deliver to him such evidence of honorable discharge; but his accounts shall first be duly settled, and the fact, date, and amount of such settlement shall be clearly written across the face of such evidence of honorable discharge, and attested by the signature of the accounting officer before it is delivered.

Honorable discharge to be returned to officers and enlisted men.
May 4, 1870, res. No. 42, v. 16, p. 374.
Sec. 282, R. S.

TRAVEL PAY ON DISCHARGE.

1391. Hereafter * * * an enlisted man when discharged from the service, except by way of punishment for an offense, shall receive four cents per mile from the place of his discharge to the place of his enlistment, enrollment, or original muster into the service.[1] *Act of March 2, 1901 (31 Stat. L., 902).*

Travel pay on discharge.
Mar. 2, 1901, v. 31, p. 902.

1392. For sea travel on discharge * * * transportation and subsistence only shall be furnished to enlisted men.[1] *Act of March 2, 1901 (31 Stat. L., 903).*

Sea travel.
Ibid., 903.

ABSENCE WITHOUT LEAVE.

1393. Any soldier who absents himself from his troop, battery, company, or detachment without leave from his commanding officer shall be punished as a court-martial may direct. *Thirty-second Article of War.*

Absence without leave.
32 Art. War.

DESERTION.

Par.
1394. Offense; penalty.
1395. Enlistment without discharge.
1396. Statutory penalties, making good time lost.
1397. The same, forfeiture of citizenship.
1398. The same restriction.
Par.
1399. Evasion of draft.
1400. Forfeiture of bounty land.
1401, 1402. Enlistment of deserter.
1403. Forfeiture of deposits.
1404. Forfeiture of pension.

1394. Any officer or soldier who, having received pay, or having been duly enlisted in the service of the United States, deserts the same, shall, in time of war, suffer death, or such other punishment as a court-martial may direct;

Desertion; penalty.
47 Art. War.

---

[1] For statutes and regulations governing the payment of travel allowances to officers and enlisted men, see the chapter entitled THE PAY DEPARTMENT.

and in time of peace, any punishment, excepting death, which a court-martial may direct.[1] *Forty-seventh Article of War.*

Enlisting in another regiment, etc. 50 Art. War.

1395. No noncommissioned officer or soldier shall enlist himself in any other regiment, troop, or company without a regular discharge from the regiment, troop, or company in which he last served, on a penalty of being reputed a deserter, and suffering accordingly. And in case any officer shall knowingly receive and entertain such noncommissioned officer or soldier, or shall not, after his being discovered to be a deserter, immediately confine him and give notice thereof to the corps in which he last served, the said officer shall, by a court-martial, be cashiered. *Fiftieth Article of War.*

---

[1] See the Forty-seventh Article of War.

Desertion is an unauthorized absenting of himself from the military service by an officer or soldier with the intention of not returning. In other words, it is the violation of military discipline familiarly known as absence without leave (whether consisting in an original absenting without authority or in an overstaying of a defined leave of absence), accompanied by an animus remanendi or non revertendi, this animus constituting the gist of the offense. In order to establish the commission of the specific offense both these elements—the fact of the unauthorized voluntary withdrawal and the intent permanently to abandon the service—must be proved. The intent may be inferred not indeed from the fact of absenting alone, but from the circumstances attending this fact, and here the duration of the absence is especially material. Thus the circumstance that the absence has been exceptionally protracted and quite unexplained will in general furnish a presumption of the existence of the necessary intent. An unauthorized absence, however, of a few hours, terminated by a forcible apprehension, may, under certain situations, be sufficient evidence of such intent, and thus proof of a desertion; while an absence for a considerable interval, unattended by circumstances indicating a purpose to separate permanently from the service, or to dissolve the pending engagement of the soldier, may be proof simply of the minor included offense. In order to determine whether or not the officer or soldier absented himself with the intent not to return, i. e., whether his offense was desertion or absence without leave, all the circumstances connected with his leaving, absence, and return (whether compulsory or voluntary) must be considered together. Each case must be governed by its own peculiar facts, and no general rule on the subject can be laid down. Dig. Opin. J. A. G., par. 1053.

No man will be reported a deserter until after the expiration of ten days (should he remain away that length of time), unless the company commander has conclusive evidence of the absentee's intention not to return; but the commanding officers will take steps to apprehend soldiers absent without leave as soon as that fact is reported. Should the soldier not return, or not be apprehended, within the time named, his desertion will date from the commencement of the unauthorized absence. An absence without leave of less than one day will not be noted upon the muster and pay rolls. Par. 144, A. R., 1901.

When a deserter surrenders or is delivered at a military post, the post commander will cause immediate inquiry to be made in regard to dates of enlistment and desertion, and if these indicate that trial is barred by law, and the deserter claims to have been within the limits of the United States during two years of his absence in desertion and there is no attainable evidence in disproof thereof, will require him to file an affidavit asserting his claim, will immediately set him at liberty with instructions to apply by letter to the Adjutant-General of the Army for a "deserter's release," and will then report his action to the Adjutant-General of the Army, transmitting with the report the affidavit above mentioned. Par. 131, ibid.

An enlisted man apprehended or surrendering as a deserter, and whose trial for desertion is not barred by the statute of limitations, will be examined by a medical officer at the post where he is received, and a report of this examination will be forwarded to department headquarters. If, on account of disease, age, or other permanent disability, the man is found unfit for service, the report, with the department

STATUTORY PENALTIES AND FORFEITURES.[1]

1396. Every soldier who deserts the service of the United States shall be liable to serve for such period as shall, with the time he may have served previous to his desertion, amount to the full term of his enlistment; and such soldier shall be tried by a court-martial and punished, although the term of his enlistment may have elapsed previous to his being apprehended and tried.[2] *Forty-eighth Article of War.*

Making good time lost.
48 Art. War.

---

commander's recommendation thereon, will be forwarded to the Adjutant-General of the Army. If the examination shows that the man is fit for service the department commander will bring him to trial, or restore him to duty without trial, as the interests of the Government may dictate. Par. 132, ibid.

Deserters will be brought to trial with the least practicable delay. While awaiting trial they will receive no pay, nor will they be permitted to sign pay rolls, and will be required to wear the clothes worn at the time of arrest, unless it should be imperative to issue other clothing, when, as far as practicable, only deserters' or other unserviceable clothing will be issued. Par. 140, ibid.

A deserter will not be restored to duty without trial, except by authority competent to order his trial. Such restoration does not remove the charge of desertion, nor relieve the soldier from any of the forfeitures attached to that offense. He must make good the time lost by desertion, refund the reward and expenses paid for apprehension and delivery, and forfeit pay while absent. Par. 132, A. R., 1895.

DISPOSITION OF EFFECTS OF DESERTERS.

The clothing abandoned by a deserter will be turned over to the quartermaster with a certificate from the company or detachment commander showing its condition and the name of the deserter to whom it belonged. All other personal effects of a deserter will be disposed of as in the case of unclaimed effects of deceased soldiers. Par. 141, A. R., 1901.

[1] The forfeiture of pay and allowances prescribed for deserters by paragraphs 126, 130, and 132 of the Army Regulations of 1895 can be imposed, in any case, only upon a satisfactory ascertainment of the fact of desertion. The same may indeed legally be enforced in the absence of an investigation by a military court, as, for instance, upon the restoration to duty without trial, by the order of competent authority, under paragraph 128 of the Army Regulations, of a deserter as such. But in general, in this case equally as in that of the statutory liability, the forfeiture can safely be applied only upon the trial and conviction by court-martial of the alleged deserter. The conviction must, of course, be duly approved; if it be disapproved, the soldier can not legally be subjected to the forfeiture, since he can not be treated as a deserter in law. Nor can he be subjected to the forfeiture if he is acquitted, though the finding be disapproved by the reviewing authority. A removal, in orders of the War Department, of a charge of desertion entered by mistake upon the rolls against a soldier, operates to relieve him of any and all stoppages which have been charged against his pay account for forfeitures authorized by the Army Regulations in cases of deserters. Dig. Opin. J. A. Gen., 342, par. 9.

A deserter can not legally be subjected to any forfeiture other than those prescribed by statute or army regulation. He incurs, for example, no forfeiture of his own personal property. So, where it was proposed to sell certain private property belonging to and left by a deserter and devote the proceeds to the post fund, *held* that there was no legal authority for such appropriation by the military authorities. So a soldier, by reason of having deserted, does not forfeit bounty money which has been paid him upon enlistment or subsequently, or any other money found in his possession upon his arrest. And such money can not legally be withheld from him to be appropriated to a regimental or post fund or any other purpose, but being his own personal property, unaffected by his offense, must be treated as such. Ibid., par. 1064.

[2] A deserter will make good the time lost by desertion, unless discharged by competent authority. He will be considered again in service upon his return to military control; but if a deserter enlists while in desertion, his services under such unlawful enlistment will not be counted as making good any of the time lost by desertion. Par. 142, A. R., 1901. See 48th article of war.

Rights of citizenship forfeited by desertion, etc. Mar. 3, 1865, c. 79, s. 21, v. 13, p. 490. Sec. 1996, R.S.

1397. All persons who deserted the military or naval service of the United States and did not return thereto or report themselves to a provost-marshal within sixty days after the issuance of the proclamation by the President dated the eleventh day of March, eighteen hundred and sixty-five, are deemed to have voluntarily relinquished and forfeited their rights of citizenship, as well as their right to become citizens; and such deserters shall be forever incapable of holding any office of trust or profit under the United States, or of exercising any rights of citizens thereof.[1]

Certain soldiers and sailors not to incur the forfeitures of the last section. July 19, 1867, c. 28, v. 15, p. 14. Sec. 1997, R.S.

1398. No soldier or sailor, however, who faithfully served according to his enlistment until the nineteenth day of April, eighteen hundred and sixty-five, and who, without proper authority or leave first obtained, quit his command or refused to serve after that date, shall be held to be a deserter from the Army or Navy; but this section shall be construed solely as a removal of any disability such soldier or sailor may have incurred, under the preceding section, by the loss of citizenship and of the right to hold office, in consequence of his desertion.

Avoiding the draft. Mar. 3, 1865, c. 79, s. 21, v. 13, p. 490. Sec. 1998, R.S.

1399. Every person who hereafter deserts the military or naval service of the United States, or who, being duly enrolled, departs the jurisdiction of the district in which he is enrolled, or goes beyond the limits of the United States with intent to avoid any draft into the military or naval service, lawfully ordered, shall be liable to all the penalties and forfeitures of section nineteen hundred and ninety-six.

Deserters not entitled to bounty land. Sept. 28, 1850, c. 85, s. 1, v. 9, p. 520; Mar. 3, 1855, c. 207, s. 1, v. 10, p. 701. Sec. 2438, R.S.

1400. No person who has been in the military service of the United States shall, in any case, receive a bounty-land warrant if it appears by the muster rolls of his regiment or corps that he deserted or was dishonorably discharged from service.

Deserters not to be enlisted. Mar. 2, 1833, v. 4, p. 647; July 4, 1864, v. 13, p. 380; Mar. 3, 1865, v. 13, p. 490; Feb. 27, 1877, v. 19, p. 242. Sec. 1118, R.S.

1401. No minor under the age of sixteen years, no insane or intoxicated person, no deserter from the military service of the United States, and no person who has been convicted of a felony shall be enlisted or mustered into the military service.

---

[1] The forfeiture of the rights of citizenship and the incapacity to hold office under the United States, imposed upon deserters by the act of March 3, 1865 (secs. 1996, 1998, R. S.), can be incurred only upon and as incident to a conviction of desertion by a general court-martial, duly approved by competent authority. These disabilities, though attaching to every such conviction, may be removed by an Executive pardon of the offender. Dig. Opin. J. A. G., par. 1061.

Such is believed to have been the uniform course of ruling in the civil courts. See State *v.* Symonds, 57 Maine, 148; Holt *v.* Holt, 59 ibid., 464; Severance *v.* Healy, 50

Persons not to be enlisted.
Mar. 3, 1865, v. 13, p. 490; May 12, 1879, v. 21, p. 3; Feb. 23, 1881, v. 21, p. 331.
Sec. 1420, R.S.

1402. No minor under the age of fourteen years, no insane or intoxicated person, and no deserter from the naval or military service of the United States shall be enlisted in the naval service.

Deposits forfeited.
May 15, 1872, c. 161, s. 1, v. 17, p. 117.
Sec. 1305, R.S.

1403. Any enlisted man of the Army may deposit his savings, in sums not less than five dollars, with any Army paymaster, who shall furnish him a deposit book, in which shall be entered the name of the paymaster and of the soldier, and the amount, date, and place of such deposit. The money so deposited shall be accounted for in the same manner as other public funds, and shall pass to the credit of the appropriation for the pay of the Army, and shall not be subject to forfeiture by sentence of court-martial, but shall be forfeited by desertion, and shall not be permitted to be paid until final payment on discharge, or to the heirs or representatives of a deceased soldier, and that such deposit be exempt from liability for such soldier's debts: *Provided*, That the Goverment shall be liable for the amount deposited to the person so depositing the same.

Forfeiture of pension.
S. 6, 26 April, 1898, v. 30.

1404. Any soldier who deserts shall, besides incurring the penalties now attaching to the crime of desertion, forfeit all right to pension which he might otherwise have acquired. *Sec. 6, act of April 26, 1898.*

AIDING, PERSUADING, ENTICING TO DESERT.

Punishment for advising or persuading desertion.
51 Art. War.

1405. Any officer or soldier who advises or persuades any other officer or soldier to desert the service of the United States, shall, in time of war, suffer death, or such other punishment as a court-martial may direct; and in time of peace, any punishment, excepting death, which a court-martial may direct. *Fifty-first Article of War.*

Enticing desertions from the military or naval service.
Mar. 3, 1863, c. 75, s. 24, v. 12, p. 735; July 1, 1864, c. 204, v. 13, p. 343; Feb. 27, 1877, v. 19, p. 253.
Sec. 5455, R.S.

1406. Every person who entices or procures, or attempts or endeavors to entice or procure, any soldier in the military service of the United States, or who has been recruited for such service, to desert therefrom, or who aids any such soldier in deserting or attempting to desert from such service, or who harbors, conceals, protects, or assists any such soldier who may have deserted from such service, knowing him to have deserted therefrom, or who refuses to give up and deliver such soldier on the demand of any officer authorized to receive him, shall be punished by imprisonment not less than six months nor more than two years, and by a fine not exceeding five hundred dollars; and every

---

N. Hamp., 448; Gotcheus *v.* Matthewson, 61 N. Y., 420 (and 5 Lansing, 214; 58 Barb., 152); Huber *v.* Reilly, 53 Pa. St., 112; McCafferty *v.* Guyer, 59 ibid., 110; Kurtz *v.* Moffit, 115 U. S., 501.

person who entices or procures, or attempts or endeavors to entice or procure, any seaman or other person in the naval service of the United States, or who has been recruited for such service, to desert therefrom, or who aids any such seaman or other person in deserting or in attempting to desert from such service, or who harbors, conceals, protects, or assists any such seaman or other person who may have deserted from such service, knowing him to have deserted therefrom, or who refuses to give up and deliver such sailor or other person on the demand of any officer authorized to receive him, shall be punished by imprisonment not less than six months nor more than three years, and by a fine of not more than two thousand dollars, to be enforced in any court of the United States having jurisdiction.[1]

APPREHENSION OF DESERTERS—REWARDS.

Who may arrest deserters. Sec. 3, June 16, 1890, v. 26, p. 157.

1407. United States marshals and their deputies, sheriffs and their deputies, constables, and police officers of towns and cities are hereby authorized to apprehend, arrest, and receive the surrender of any deserter from the Army for the purpose of delivering him to any person in the military service authorized to receive him.[2] *Sec. 3, act of June 16, 1890* (*26 Stat. L., 157*).

Arrest, etc., of deserters by civil officers. Sec. 2, Oct. 1, 1890, v. 26, p. 648.

1408. It shall be lawful for any civil officer having authority under the laws of the United States or of any State, Territory, or District, to arrest offenders, to summarily arrest a deserter from the military service of the United States and deliver him into the custody of the military authority of the General Government.[3] *Sec. 2, act of June 18, 1898* (*30 Stat. L., 484*).

Reward for apprehension of deserters. Mar. 3, 1899, v. 30, p. 1070.

1409. For the apprehension, securing, and delivery of deserters and the expenses incident to their pursuit, and no greater sum than fifty dollars for each deserter shall, in the discretion of the Secretary of War, be paid to any officer or citizen for such services and expenses.[1] *Act of March 3, 1899* (*30 Stat. L.*, *1070*).

---

[1] Where a civil official, having made an arrest of a deserter, concealed him from the military authorities, and afterwards permitted or connived at his escape, recommended that the Attorney-General be requested to instruct the proper United States district attorney to initiate proceedings under section 5455, Revised Statutes. Dig. Opin. J. A. G., 345, par. 17.

[2] See, in this connection, Clay *v.* U. S., Devereux, 25, in which an officer, who, under orders of a superior, had, without previously procuring proper authority to enter and search from a civil magistrate, broken into a dwelling house for the purpose of securing the arrest of certain deserters, was held to have committed an unjustifiable trespass, and his claim to be reimbursed by the United States for the amount of a judgment recovered against him on account of his illegal act was disallowed by the Court of Claims. See also Matthews *v.* U. S., 32 Ct. Cls., 123; Spinney *v.* U. S., ibid., 397.

[3] This statute replaces section 2, act of October 1, 1890 (26 Stat. L., 648), *in pari materia.*

---

[1] The actual payment of the compensation in such cases is authorized by the annual army appropriation acts, which, in appropriating for the incidental expenses of the Quartermaster's Department, include as an item—"for the apprehension, securing, and delivering of deserters, and the expenses incident to their pursuit." Prior to the act of August 6, 1894 (28 Stat. L., 239), the maximum reward for the apprehension and delivery of a deserter from the military service was fixed at $30. The act of August 6, 1894 (28 Stat. L., 239), fixed the maximum amount of such reward at $10, and this provision was repeated in the acts of February 12, 1895 (28 Stat. L., 659); March 16, 1896, 29 ibid., 65; March 2, 1897, ibid., 614, and March 16, 1898, 30 ibid., 30. Under the authority conferred by the above statute the following regulation was promulgated by the Secretary of War in G. O. 160, A. G. O., 1899:

A reward of $30 will be paid to any civil officer having authority for the apprehension and delivery to the proper military authorities at a military station (or at some convenient point as near thereto as may be agreed upon) of any deserter from the military service, except such as can claim exemption from trial under the statute of limitations, and such officer will also be reimbursed for actual cost of tickets over the shortest usually traveled route for himself to and from such station or point and for the deserter to such station or point not to exceed $20. The reward and actual cost of tickets will be paid by the Quartermaster's Department, and will be in full satisfaction of all expenses for arresting, keeping, and delivering the deserter. The payment will be reported to the commander of the company or detachment to which the deserter belongs. Par. 135, A. R., 1901.

Rewards or expenses paid for apprehending a deserter, and the expenses incurred in transporting him from point of apprehension, delivery, or surrender to the station of his company or detachment, or to the place of his trial, including the cost of transportation of the guard, will be set against his pay upon conviction of desertion by a court-martial, or upon his restoration to duty without trial. A soldier convicted by a court-martial of absence without leave will be charged with the expense incurred in transporting him to his proper station. The transportation and subsistence of witnesses will not be charged against a deserter. Par. 137, ibid.

If a soldier be brought to trial under a charge of desertion and acquitted, or convicted of absence without leave only, or if the sentence be disapproved by proper authority, any amount paid as a reward for his arrest will not be stopped against his pay unless, in case of conviction of absence without leave, the sentence of the court shall so direct. Par. 138, ibid.

The reward of $30, made payable by paragraph 156, Army Regulations, 1863, is not due merely on the apprehension of a deserter; he must also be delivered "to an officer of the Army at the most convenient post or recruiting station." The fact of the offer of a reward for the arrest of a deserter does not authorize a breach of the peace or commission of an illegal act in making the arrest. Dig. Opin. J. A. G., par. 1071 and note.

The amount of the reward and reimbursement provided for in G. O. 160, A. G. O., 1899, are there stated to be "in full satisfaction of all expenses for arresting, keeping, and delivering the deserter." Disbursements made by a civilian, where no arrest is effected, are at his own risk, and can not legally be reimbursed by the military authorities. Ibid., par. 1072.

The legal liability imposed upon the soldier by paragraph 137, Army Regulations, 1901, to have the amount of the reward stopped against his pay, is quite independent of the punishment which may be imposed upon him by sentence of court-martial on conviction of the desertion. Such stoppage need not be directed in the sentence; courts-martial indeed have sometimes assumed to impose it, like an ordinary forfeiture of pay, but its insertion in the sentence adds nothing to its legal effect. Ibid., par. 1073.

Where a soldier, charged with desertion, is acquitted, or where, if convicted, his conviction is disapproved by the competent reviewing authority, he can not legally be made liable for the amount of a reward paid or payable for his arrest as a deserter, since in such cases he is not a deserter in law. Ibid., par. 1074.

Where a soldier for whose apprehension as a supposed deserter the legal reward has been paid, is subsequently brought to trial upon a charge of desertion, and is found guilty not of desertion but only of the lesser and distinct offense of absence without leave, he clearly can not legally be held liable for the reward by a stoppage of the amount against his pay. In such a case, the instrumentality resorted to by

STATUTE OF LIMITATIONS IN DESERTION.

Statute of limitation in desertion.
Apr. 11, 1890, v. 26, p. 54.

1411. No person shall be tried or punished by a court-martial for desertion in time of peace, and not in the face of an enemy, committed more than two years before the arraignment of such person for such offense, unless he shall

---

the United States for determining the nature of his offense—the court-martial—having pronounced that it was not desertion, the Government is bound by the result, and to visit upon him a penalty to which a deserter only can be subject, would be grossly arbitrary and wholly unauthorized. Moreover, such action would be directly at variance with the terms of paragraph 137 of the Army Regulations of 1901, which fixes such liability upon the soldier tried in the event only of his conviction of desertion, unless indeed the sentence of the court expressly forfeits the amount. Ibid., par. 1075.

PAYMENT OF REWARDS.

To entitle a person (under paragraph 137, Army Regulations of 1901) to the reward for the arrest of a deserter, the party arrested must be still a soldier. Though, at the time of the arrest, the period of his term of enlistment may have expired, or he may be under sentence of dishonorable discharge, yet if he has not been discharged in fact, the official duly making the arrest, etc., on account of a desertion committed before the end of his term, becomes entitled to the payment of the reward specified in the regulations. Similarly *held*, where the soldier, arrested when at large as a deserter, had been sentenced to confinement (without discharge), and had escaped therefrom. Ibid., par. 1076.

The soldier arrested must be a deserter and legally liable as such. If he has been judicially determined to be not a deserter, as where he has been convicted of absence without leave only (see paragraph 126, Army Regulations); or, if, in view of the limitation of the one hundred and third article, he has a legal defense to a prosecution for desertion (General Orders 22 of 1893), the reward is not payable for his apprehension. Ibid., 347, par. 27. See also par. 127, A. R., 1895.

Where the soldier when arrested had been absent but three days, and was still in uniform, and had not been reported or dropped as a deserter, and his company commander had not the "conclusive evidence" of his "intention not to return," referred to in paragraph 144, Army Regulations, 1901, *held* that there was not sufficient evidence that he was a deserter to justify the payment of the reward for his arrest and delivery. Ibid., par. 1078.

The arrest made must be a legal one. Thus *held* that the reward was not payable for an arrest made on the soil of Mexico, involving a violation of the territorial rights of that sovereignty. An act done in violation of law can not be the basis of a legal claim. Ibid., par. 1080.

Where the deserter was not arrested by, but surrendered himself to, the civil official, who in good faith took him into custody and securely held and duly delivered him—*advised* that there had been a substantial apprehension and that the reward was properly payable. [See Circular No. 1 (H. A.), 1886.] Ibid., par. 1081.

The delivery should be personal and manual on the part of the civil official. Where a soldier who had deserted was sentenced to a penitentiary as a horse thief, and at the end of his term of imprisonment a United States marshal caused information that he was a deserter to be conveyed to the commander of a neighboring military post, who thereupon had him arrested and brought to the post, *held* that the marshal was not entitled to claim the reward. Ibid., par. 1082.

So, where a civil official merely informed a captain of artillery that two soldiers serving in his battery were deserters from the battalion of engineers, *held* that, though such information was correct, the official was not entitled to the reward; and that the amount of the same, which had been erroneously paid him on the certificate of the captain, should be charged against the latter under paragraph 736, Army Regulations, 1901. Ibid., par. 1083.

The reward should be withheld where there is evidence of collusion between the alleged deserter and the civil official. *Advised* that a suspicion of such collusion was properly entertained in a case where the soldier, after an absence of but a few days, voluntarily surrendered himself, at or near the post of delivery, to a policeman, wdo turned him over, without expense or difficulty, to the military authorities who hid meanwhile have absented himself from the United States, in which case the time of his absence shall be excluded in computing the period of the limitation: *Provided*, That said limitation shall not begin until the end of the term for which said person was mustered into the service.[1] *Act of April 11, 1890 (26 Stat. L., 54).*

---

not treat him as a deserter but caused him to be charged, tried, and convicted as an absentee without leave only. Ibid., par. 1086.

An officer of the customs, empowered by law to make arrests of persons violating the revenue laws, but having no such general authority as is ordinarily possessed by peace officers "to arrest offenders" (according to the terms of the act of October 1, 1890, authorizing certain civil officials to arrest deserters)—*held* not entitled to be paid the regulation reward for the apprehension, etc., of a deserter from the Army. Ibid., par. 1087.

Held that a justice of the peace of Idaho was not, by the laws of that State, a peace officer or authorized to arrest offenders, and was therefore not within the terms of the act of October 1, 1890, or legally entitled to be paid the reward for the arrest, etc., of a deserter. Such justice may by his warrant authorize and thus cause arrests, but actual arrest pertains, under the laws of the State, to another class—sheriffs, constables, city marshals, and policemen. But *held* that a member of the Indian police, established under the regulations of the Indian Office, was a civil officer having authority to arrest offenders, and was entitled to the reward for the arrest of a deserter. Ibid., par. 1088.

Circular No. 11 (H. A.), 1883 declares that the reward shall not be paid where the deserter, at the time of arrest, "is serving in some other branch of the Army," etc. Thus *held* that the reward was not payable for the arrest of a deserter from the cavalry, who subsequently to his desertion, had enlisted in an infantry regiment in which he was serving at the date of the arrest. Ibid., par. 1091.

Where a civil official in good faith and in compliance with military instructions, made the arrest and delivery of a deserter, who, however, was of the class of deserters specified in General Orders 22 of 1893, viz, those who "would have the right to claim exemption from trial and punishment" under the present one hundred and third article of war—a fact not within the knowledge of the official and which he could not have ascertained, but who therefore had no legal claim for the payment of the reward—*held* that the reasonable expenses of such official incurred in the arrest, etc., might well be allowed by the Secretary of War out of the appropriation for the contingent expenses of the Army. But the civil official takes the risk of the soldier being or not being an actual deserter. If he turns out to be not one the official loses his time and disbursements, if any. Thus *held* that such official could have no claim to be reimbursed his expenses incurred in making, in good faith, the arrest of a supposed deserter who was in fact a dishonorably discharged soldier. Ibid., 349, par. 37.

A deserter is not chargeable, under paragraph 137, Army Regulations, 1901, with the expenses of transportation therein specified, if his conviction has been duly disapproved; such disapproval being tantamount to an acquittal. Ibid., par. 1067.

The expense of the transportation of a convicted deserter, incurred in the course of the execution of his sentence is not chargeable against the deserter under paragraph 137, Army Regulations of 1901, but must be borne by the United States. Ibid., par. 1068.

[1] The so-called "deserter's release," provided for by General Orders, 55, of 1890, is accorded when, by reason of the period which has elapsed since the end of his term of enlistment, the deserter could successfully plead the statute of limitations to a prosecution for his desertion. This period is complete at the expiration of two years from the end of its term. But where a soldier, who would have been eligible for such release on May 9, 1894, was, in February preceding, arrested, brought to trial, convicted, and sentenced to be dishonorably discharged, and was so discharged accordingly, *held* that he was not within the privilege of the General Orders, and that the release could not be accorded him. [As to the purpose and effect of this "release," see Circular No. 5, H. Q. A., 1894.] Dig. Opin. J. A. G., par. 1100.

The "deserter's release" is intended for deserters in whose favor the limitation of the present one hundred and third article of war has fully run, and who therefore

MISCELLANEOUS PROVISIONS.

Par.
1412. Exemption of enlisted men from arrest for debt.
1413. Enlisted men not to be used as servants.

Exemption from arrest for debt. Sec. 1237, R. S.

1412. No enlisted man shall, during his term of service, be arrested on mesne process, or taken or charged in execution for any debt, unless it was contracted before his enlistment, and amounted to twenty dollars when first contracted.

Enlisted men not to be used as servants. Sec. 14, July 15, 1870, v. 16, p. 319.

1413. No officer shall use an enlisted man as a servant in any case whatever. Sec. 1232, R. S.

DECEASED SOLDIERS.

Par.
1414. Deceased soldiers' effects.
1415. Officers charged with effects of deceased soldiers to account for same.

Deceased soldiers' effects. 126 Art. War.

1414. In case of the death of any soldier, the commanding officer of his troop, battery, or company shall immediately secure all his effects then in camp or quarters, and shall, in the presence of two other officers, make an inventory thereof, which he shall transmit to the office of the Department of War.[1] *One hundred and twenty-sixth Article of War.*

Officers charged with effects of deceased soldiers to account for same. 127 Art. War.

1415. Officers charged with the care of the effects of deceased officers or soldiers shall account for and deliver the same, or the proceeds thereof, to the legal representatives of such deceased officers or soldiers. And no officer so charged shall be permitted to quit the regiment or post until he has deposited in the hands of the commanding

---

have a perfect defense to a prosecution. It was designed to secure them against proceedings for desertion and to obviate the expenses to which the Government might be put in the matter of their arrest and their trial. But it is not, and can not, in view of the provisions of article 4, serve as a discharge from the Army. The language of General Orders, 55, of 1890, which describes it as a release "from the Army," is therefore faulty. Ibid., par. 1101.

A deserter who has been once dishonorably discharged is not a subject for the "release"—does not belong to the class of persons for whom it is intended. It is designed for soldiers actually in service. It can not therefore now be given to one who was a soldier of a volunteer organization during the late war of the Rebellion. Nor can it be issued in a case of a soldier who has deceased. Ibid., par. 1102.

[1] DISPOSITION OF EFFECTS.

When a soldier is killed in action, or dies at any post, hospital, or station, it shall be the duty of his immediate commander to secure his effects and to prepare the inventory required by the one hundred and twenty-sixth article of war, according to prescribed form and to notify nearest relative of the fact of death. Duplicates of the inventory, with final statements, will be forwarded direct to the Adjutant-General of the Army. Par. 175, A. R., 1901.

officer all the effects of such deceased officers or soldiers not so accounted for and delivered.[1] *One hundred and twenty-seventh Article of War.*

EXPENSES OF TRANSPORTATION AND BURIAL.

Transportation of remains. March 3, 1899, v. 30, p. 1225.

1416. To enable the Secretary of War, in his discretion, to cause to be transported to their homes the remains of officers and soldiers who die at military camps or who are killed in action or who die in the field at places outside of the limits of the United States, one hundred thousand dollars.[2] *Act of March 3, 1899 (30 Stat. L., 1225).*

Reimbursement of expense of transportation and burial. March 3, 1899, v. 30, p. 1225.

1417. In all cases where an officer or an enlisted man in either the Army, Navy, Marine Corps of the United States, or contract surgeon or trained nurse in the employ of the Government, has died while on duty away from home since the first day of January, eighteen hundred and ninety-

---

[1] Should the effects of a deceased soldier not be claimed within thirty days, they will be sold by a council of administration under the authority of the post commander, and the proceeds transferred to the commander of the company to which the deceased belonged, by whom they will be deposited with a paymaster to the credit of the United States. Duplicate receipts will be taken, one of which will be sent direct to the Adjutant-General of the Army and the other retained with the company records. Par. 176, A. R., 1901.

In all cases of sale by a council of administration, a detailed statement of the proceeds, duly certified by the council and commanding officer, will accompany the paymaster's receipt forwarded by the company commander to the Adjutant-General of the Army. The statement will be indorsed: "Report of the proceeds of the effects of ——— ———, late of Company——, ——— Regiment of ———, who died at ———, the —— day of ———, ———." Par. 177, Ibid.

The effects will be delivered, when called for, to the legal representatives of the deceased, and the receipts therefor forwarded to the Adjutant-General of the Army. Applications for arrears of pay and proceeds of sale of effects of deceased soldiers should be addressed to the Auditor for the War Department, Washington, D. C., who settles such accounts. Par. 178, *ibid.*

In the settlement of the accounts of deceased soldiers, the accounting officers dispense with administration, and, as it were, administer themselves, paying to the persons entitled such amounts as may be found to be due the deceased in a final settlement of his accounts with the United States. 3 Compt. Dec., 197.

FUNERAL EXPENSES.

The remains of deceased soldiers will be decently inclosed in coffins and transported by the Quartermaster's Department to the nearest military post or national cemetery for burial unless the commanding officer deem burial at the place of death to be proper, when a report of the fact will be made to the Adjutant-General of the Army. The expense of transporting the remains is payable from the appropriation for Army transportation; other expenses of burial are limited to $15 for noncommissioned officers and $10 for private soldiers. Par. 162, A. R., 1895. See also Circular 9, A. G. O., 1900, note to paragraph 1339, *ante.*

The annual acts of appropriation since that of August 8, 1846 (9 Stat. L., 68), have contained provision for the expenses of interment of noncommissioned officers and soldiers. The act of July 8, 1898 (30 Stat. L., 730), and subsequent acts of appropriation have made provision for transporting to their homes the remains of officers and soldiers who die at military camps or who are killed in action or who die in the field at places outside the territorial limits of the United States.

[2] The acts of June 6, 1900 (31 Stat. L., 631), and Mar. 3, 1901 (ibid., 1025), contained the same provision.

eight, and the remains have been taken home and buried at the expense of the family or friends of the deceased, the parties who paid the cost of transportation and burying such remains shall be repaid at the expense of the United States by the Secretary of the Treasury, not to exceed what it would have cost the United States to have transported the remains to their homes.[1] *Act of March 3, 1899 (30 Stat. L., 1225).*

Transportation of remains of enlisted men and civilian employees. May 26, 1900, v. 31, p. 213.

1418. To enable the Secretary of War, in his discretion, to cause to be transported to their homes the remains of civilian employees of the Army, who have died, or may hereafter die, while in the employ of the War Department in Cuba, Porto Rico, Hawaii, and the Philippines, including the remains of any honorably discharged soldiers who are entitled under the terms of their discharge to return transportation on Government transport and who die while on said transport, the sum of one hundred thousand dollars, which is hereby appropriated and made immediately available for the above purpose as long as may be required. *Act of May 26, 1900 (31 Stat. L., 213).*

---

[1] The terms of the act of appropriation authorizing the payment of certain expenses of burial in the case of enlisted men who die "while on duty," have been held by the Comptroller of the Treasury to prohibit the payment of such expenses in the case of a soldier who was killed while attempting to run the guard. VI Compt. Dec., 794; held similarly as to a soldier who died at his home, ibid., 343; of a soldier who died in confinement, ibid., 453; and of a soldier who had once been buried, ibid., 485.

The expense of burial in the case of an enlisted man, as establised at $35 by paragraph 162, A. R., 1895, as amended by G. O. 141, A. G. O., 1898, "will be limited to the cost of the coffin and the reasonable and necessary expense of preparation of the remains for burial, and will not include such items as: For guarding remains, expense of services of clergyman or minister, music by band or choir, flowers, cost or hire of pall to be used with horse, tombstone, crape or gloves for pallbearers, and expense of grave site where the remains are sent home at the request of relatives." Circular 9, A. G. O., 1900

CHAPTER XXX.

THE TROOPS OF THE LINE.

TROOPS, BATTERIES, COMPANIES.

Par.
1419–1428. Cavalry.
1429–1444. The artillery corps.
1445–1451. Infantry.
1452. Engineer troops.

Par.
1453. Maximum strength.
1454. Vacancies; how filled.
1455, 1456. The same.
1457. Company cooks.

CAVALRY.

1419. Cavalry regiment.
1420. Colored regiments.
1421. Dismounted cavalry.
1422. Sergeant-major and quartermaster-sergeants, pay.
1423. Details, regimental staff, etc.
1424. Band.
1425. Squadron staff, pay.
1426. Veterinarians.
1427. Troops.
1428. Increase in strength.

Regiment. Feb. 2, 1901, s. 2, v. 31, p. 748. Sec. 1102, R.S.

1419. Each regiment of cavalry shall consist of one colonel, one lieutenant-colonel, three majors, fifteen captains, fifteen first lieutenants, and fifteen second lieutenants; two veterinarians, one sergeant-major, one quartermaster-sergeant, one commissary-sergeant, three squadron sergeants-major, two color-sergeants with rank, pay, and allowances of squadron sergeant-major, one band, and twelve troops organized into three squadrons of four troops each.[1] *Sec. 2, act of February 2, 1901 (30 Stat. L., 748).*

---

[1] This enactment replaces section 1102, Revised Statutes, and section 2, act of March 2, 1899, *in pari materia.* Section 28 of the act of February 2, 1901 (31 Stat. L., 755), contained the requirement that "vacancies in the grade of field officers and captain created by this act in the cavalry, artillery, and infantry shall be filled by promotion, according to seniority in each branch, respectively. For the method of filling vacancies created by the act of February 2, 1901, in the grades of first and second lieutenants, see paragraph 1455, *post.*

Of the several cavalry regiments now composing the peace establishment, the first, a regiment of dragoons, was authorized by the act of March 2, 1833 (4 Stat. L., 652). A second regiment of dragoons was authorized by the act of May 23, 1836 (5 Stat. L., 32). The second regiment of dragoons was converted into a regiment of riflemen by the act of August 23, 1842 (5 Stat. L., 512), but was reconverted into a regiment of dragoons by the act of April 4, 1844 (5 Stat. L., 654). A regiment of mounted riflemen was added to the establishment by the act of May 19, 1846 (9 Stat. L., 13). Two regiments of cavalry (known as the First and Second) were authorized by the act of

Colored regiments.
July 28, 1866, s. 3, v. 14, p. 332.
Sec. 1104 R. S.

1420. The enlisted men of two regiments of cavalry shall be colored men.

Dismounted cavalry.
July 28, 1866, s. 3, v. 14, p. 332.
Sec. 1105 R. S.

1421. Any portion of the cavalry force may be armed and drilled as infantry, or dismounted cavalry, at the discretion of the President.

Sergeant-major, quartermaster-sergeant pay.
March 2, 1899, s. 2, v. 30, p. 977.

1422. The regimental sergeant-major and the regimental quartermaster-sergeant provided for in this section shall have the pay and allowances of ordnance sergeants. *Sec. 2, act of March 2, 1899 (30 Stat. L., 977).*

Details.
Feb. 2, 1901, s. 2, v. 31, p. 748.

1423. Of the officers herein provided, the captains and lieutenants not required for duty with the troops shall be available for detail as regimental and squadron staff officers and such other details as may be authorized by law or regulations.[1] *Sec. 2, act of February 2, 1901 (31 Stat. L., 748).*

March 3, 1855 (10 Stat. L., 635). A third regiment of cavalry was organized by order of the President on May 4, 1861, confirmed by the act of July 29, 1861 (12 Stat. L., 279). In accordance with the authority conferred by the act of August 3, 1861, the six mounted regiments of the Army were consolidated into one corps and designated as follows:

The First Regiment of Dragoons, as the First Cavalry.
The Second Regiment of Dragoons, as the Second Cavalry.
The Regiment of Mounted Riflemen, as the Third Cavalry.
The First Regiment of Cavalry, as the Fourth Cavalry.
The Second Regiment of Cavalry, as the Fifth Cavalry.
The Third Regiment of Cavalry, as the Sixth Cavalry.

Four regiments of cavalry, the Seventh, Eighth, Ninth, and Tenth, the Ninth and Tenth composed of colored men, were added to the establishment under the authority conferred by the act of July 28, 1866 (14 Stat. L., 332); the Eleventh, Twelfth, Thirteenth, Fourteenth, and Fifteenth were added by section 2, act of February 2, 1901 (31 ibid., 748).

[1] THE REGIMENTAL, SQUADRON, AND BATTALION STAFF.

The staff of a regiment consists of the adjutant, the quartermaster, and the commissary, and they will be so designated respectively. They will be appointed by the regimental commander, who will at once report his action to the Adjutant-General by telegraph; the appointment of the quartermaster and commissary to be made subject to the approval of the Secretary of War. These appointments will not be antedated and will take effect on the day on which actually made. An officer will be entitled to the pay pertaining to his appointment from the date he enters upon duty under it. Squadron and battalion adjutants of cavalry and infantry will be appointed by the regimental commander upon the recommendation of the squadron and battalion commanders.

The adjutant, quartermaster, and commissary may hold office for four years, and the squadron and battalion adjutants and quartermasters for two years and no longer. They will not be eligible for a second tour of such duty, nor for appointment or reappointment to either position, except to serve an unexpired term of four or two years; but the time an adjutant or quartermaster of a regiment may have previously served as such, with the rank of lieutenant, and any period an officer may have served as squadron or battalion adjutant, will not be included in computing the four years for which he may hold the office of a regimental staff officer. Par. 234, A. R. 1895 (Par. 260, A. R. 1901), G. O. No. 16, A. G. O., 1899.

Staff appointments in a regiment are restricted to officers on duty with the regiment and who are not serving at a school of instruction. Should the regimental commander desire to appoint an officer absent from the regiment, he may apply for orders for such officer to join; but the officer must join before the appointment can be made. Par. 262, A. R. 1901, G. O. No. 116, A. G. O., 1899. Medical officers are no longer attached to regiments on the peace establishment.

Band. March 2, 1899, s. 2, v. 30, p. 977.

1424. Each cavalry band shall consist of one chief musician, one principal musician, one drum-major, who shall have the pay and allowances of a first-sergeant, four sergeants, eight corporals, one cook, and eleven privates.[1] *Sec. 2, act of March 2, 1899 (30 Stat. L., 977).*

Squadron staff officers' pay. Feb. 2, 1901, s. 2, v. 31, p. 748.

1425. Squadron adjutants shall receive eighteen hundred dollars per annum and the allowances of first lieutenants; squadron quartermasters and commissaries shall receive sixteen hundred dollars per annum and the allowances of second lieutenants.[2] *Sec. 2, act of February 2, 1901 (31 Stat. L., 748).*

Veterinarians. Feb. 2, 1901, s. 20, v. 31, p. 753. Mar. 2, 1901, v. 31, p. 901.

1426. The grade of veterinarian of the second class in cavalry regiments, United States Army, is hereby abolished, and hereafter the two veterinarians authorized for each cavalry regiment and the veterinarians authorized for the Artillery Corps shall receive the pay and allowances of second lieutenants, mounted.[3] *Sec. 20, act of February 2, 1901 (31 Stat. L., 753); act of March 2, 1901 (ibid., 901).*

Cavalry troop. Feb. 2, 1901, s. 2, v. 31, p. 748. Sec. 1103, R.S.

1427. Each troop of cavalry shall consist of one captain, one first lieutenant, one second lieutenant, one first sergeant, one quartermaster sergeant, six sergeants, six corporals, two cooks, two farriers and blacksmiths, one saddler, one wagoner, two trumpeters, and forty-three privates, the commissioned officers to be assigned from those hereinbefore authorized.[4] *Sec. 2, act of February 2, 1901 (31 Stat. L., 748).*

Increase. Feb. 2, 1901, s. 2, v. 30, p. 748.

1428. The President, in his discretion, may increase the number of corporals in any troop of cavalry to eight, and the number of privates to seventy-six, but the number of enlisted men authorized for the whole Army shall not at any time be exceeded. *Sec. 2, act of February 2, 1901 (31 Stat. L., 748).*

---

[1] Section 2 of the act of February 2, 1901, contains the requirement that "each cavalry band shall be organized as now provided by law."

[2] For regulations respecting the detail and term of service of squadron and battalion staff officers see note to paragraph 1423, *ante*.

[3] This enactment replaces section 1102, Revised Statutes, and section 2, act of March 2, 1899. 30 Stat. L., 977.

[4] This enactment replaces section 1103, Revised Statutes, and section 2, act of March 2, 1899. 30 ibid., 977.

Since 1883 companies of cavalry have been designated as troops. Circulars 8 and 9, A. G. O., of 1883. By General Orders, No. 79 and 120, of 1890, the enlisted men of Troops L and N of each regiment of cavalry were distributed among the other troops. By General Orders, No. 27, of 1898, issued at the outbreak of the war with Spain, the skeletonized troops were reestablished and restored to the status occupied by them prior to the skeletonization in 1890.

THE ARTILLERY CORPS.[1]

Par.
1429. Organization.
1430. The same, coast and field artillery.
1431. Composition.
1432. Officers on one list.
1433. Increase, how effected.
1434. Details, staff duty.
1435, 1436. Veterinarians.
1437, 1438. Company, coast artillery.
1439, 1440. Battery, field artillery.
1441. Band.
1442. Restriction on enlisted force.
1443. Electrician sergeants.
1444. Gunners, increased pay.

Organization. Feb. 2, 1901, s. 3, v. 31, p. 748.

1429. The regimental organization of the artillery arm of the United States Army is hereby discontinued, and that arm is constituted and designated as the artillery corps. It shall be organized as hereinafter specified and shall belong to the line of the Army. *Sec. 3, act of February 2, 1901 (31 Stat. L., 748).*

The same. Feb. 2, 1901, s. 4, v. 31, p. 749.

1430. The artillery corps shall comprise two branches—the coast artillery and the field artillery. The coast artillery is defined as that portion charged with the care and use of the fixed and movable elements of land and coast fortifications, including the submarine and torpedo defenses; and the field artillery as that portion accompanying an army in the field, and including field and light artillery proper, horse artillery, siege artillery, mountain artillery, and also machine-gun batteries: *Provided*, That this shall not be construed to limit the authority of the Secretary of War to order coast artillery to any duty which the public service demands, or to prevent the use of machine or other field guns by any other arm of the service under the direction of the Secretary of War. *Sec. 4, act of February 2, 1901 (31 Stat. L., 749).*

The same; composition. Feb. 2, 1901, s. 6, v. 31, p. 749.

1431. The artillery corps shall consist of a chief of artillery, who shall be selected and detailed by the President from the colonels of the corps of artillery, to serve on the staff of the general officer commanding the Army, and whose duties shall be prescribed by the Secretary of War; fourteen colonels, one of whom shall be the chief of artillery; thirteen lieutenant-colonels, thirty-nine majors, one hundred and ninety-five captains, one hundred and ninety-five first lieutenants, one hundred and ninety-five second lieutenants; veterinarians[1] * * * ; twenty-one sergeants-major with the rank, pay, and allowances of regimental sergeants-major of infantry; twenty-seven sergeants-major with the rank, pay, and allowances of battalion sergeants-major of infantry; one electrician sergeant to each coast-artillery post having electrical appliances; thirty batteries of field artillery, one hundred and twenty-six batteries of coast artillery, and ten bands organized as now authorized by law for artillery regiments. *Sec. 6, act of February 2, 1901 (31 Stat. L., 749).*

---

[1] At the general reduction of the Army, effected in pursuance of the act of March 2, 1821 (3 Stat. L., 615), the artillery was consolidated into four regiments of nine companies each, one of which, in each regiment, was to be designated and equipped as light artillery. The Ordnance Department was merged in the artillery, a supernumerary captain, for ordnance duty, was added to each regiment, and the President was authorized "to select from the regiments of artillery such officers as may be necessary to perform ordnance duties who, while so detached, shall be subject only to the orders of the War Department." The Ordnance Department was separated from the artillery by the act of May 25, 1832 (4 Stat. L., 605). One company was added to each regiment by the act of July 5, 1838 (5 Stat. L., 256), and two companies by section 18 of the act of March 3, 1847 (9 Stat. L., 184), making twelve companies in all. The act of March 3, 1847, authorized the President to designate an additional company in each regiment to be armed and equipped as light artillery. The fifth regiment was added, as a regiment of light artillery, by order of the President, on May 5, 1861, the organization being confirmed by the act of July 29, 1861 (12 Stat. L., 279). The sixth and seventh regiments were added, and the organization of the first five regiments modified, by the act of March 8, 1898 (30 Stat. L., 261). This section replaces sections 1099–1101, Revised Statutes, the act of March 8, 1898 (30 *ibid.*, 261), and section 3, act of March 2, 1899 (ibid., 977).

Officers on one list.
Feb. 2, 1901, s. 5, v. 31, p. 749.

1432. All officers of artillery shall be placed on one list, in respect to promotion, according to seniority in their several grades, and shall be assigned to coast or to field artillery according to their special aptitude for the respective services. *Sec. 5, act of February 2, 1901 (31 Stat. L., 749).*

Increase; how effected.
Feb. 2, 1901, s. 9, v. 31, p. 749.

1433. The increase herein provided for the artillery shall be made as follows: Not less than twenty per centum before July first, nineteen hundred and one, and not less than twenty per centum each succeeding twelve months until the total number provided for shall have been attained. All vacancies created or caused by this act shall be filled by promotion according to seniority in the artillery arm.[2] Second lieutenants of infantry and cavalry may, in the discretion of the President, be transferred to the artillery arm, taking rank therein according to date of commission, and such transfers shall be subject to approval by a board of artillery officers appointed to pass upon the capacity of such officers for artillery service: *Provided*, That the increase of officers of artillery shall be only in proportion to the increase of men. *Sec. 9, act of February 2, 1901 (31 Stat. L., 749).*

Details.
Feb. 2, 1901, s. 6, v. 31, p. 749.

1434. The captains and lieutenants provided for in this section, not required for duty with batteries or companies, shall be available for duty as staff officers of the various artillery garrisons and such other details as may be authorized by law and regulations.[1] *Sec. 6, act of February 2, 1901 (31 Stat. L., 749).*

---

[1] Added by act of March 3, 1901 (31 Stat. L., 901).

[2] For method of filling vacancies in the grade of lieutenant created by this act see section 28, act of February 2, 1901 (31 Stat. L., 755), paragraph 1454, *post.*

Veterinarian. Feb. 2, 1901, v. 31, p. 753; Mar. 2, 1901, v. 31, p. 901.

1435. Twelve of the veterinarians herein provided for may be assigned to the artillery. *Act of February 2, 1901 (31 Stat. L., 753); act of March 2, 1901 (ibid., 901).*

Veterinarians. Feb. 2, 1901, s. 20, v. 31, p. 753; Mar. 3, 1901, v. 31, p. 901.

1436. Hereafter * * * the veterinarians authorized for the Artillery Corps shall receive the pay and allowances of second lieutenant, mounted. *Sec. 20, act of February 2, 1901 (31 Stat. L., 753); act of March 3, 1901 (ibid., 901).*

Battery, coast artillery. Feb. 2, 1901, s. 7, v. 31, p. 749. Sec. 1100, R. S.

1437. Each company of coast artillery shall be organized as is now prescribed by law for a battery of artillery: *Provided*, That the enlisted strength of any company may be fixed, under the direction of the Secretary of War, according to the requirements of the service to which it may be assigned. *Sec. 7, act of February 2, 1901 (31 Stat. L., 749).*

The same. Mar. 2, 1899, s. 3, v. 30, p. 977. Sec. 1100, R. S.

1438. Each battery of (coast) artillery shall consist of one captain, one first lieutenant, one second lieutenant, one first sergeant, one quartermaster-sergeant, who shall have the rank, pay, and allowances of a sergeant, eight sergeants, twelve corporals, two musicians, two mechanics, who shall have the pay and allowances of sergeants of artillery, two cooks, and fifty-two privates. *Sec. 3, act of March 2, 1899 (30 Stat. L., 977).*

Battery, field artillery. Feb. 2, 1901, s. 8, v. 31, p. 749.

1439. Each battery of field artillery shall be organized as is now prescribed by law, and the enlisted strength thereof shall be fixed under the direction of the Secretary of War. *Sec. 8, act of February 2, 1901 (31 Stat. L., 749).*

The same. Mar. 2, 1899, s. 3, v. 30, p. 977. Sec. 1100, R. S.

1440. Each battery of field artillery shall consist of one captain, one first lieutenant, one second lieutenant, one first sergeant, one stable sergeant, one quartermaster-sergeant, six sergeants, twelve corporals, four artificers, two musicians, two cooks, and fifty-one privates. *Sec. 3, act of March 2, 1899 (30 Stat. L., 977).*

Band. Mar. 2, 1899, s. 3, v. 30, p. 977.

1441. Each artillery band shall consist of one chief musician, one chief trumpeter, one principal musician, one drum-major, who shall have the rank, pay, and allowances of a first sergeant, four sergeants, eight corporals, one cook, and eleven privates. *Sec. 3, act of March 2, 1899 (30 Stat. L., 977).*

Restriction on enlisted men. Feb. 2, 1901, s. 6, v. 31, p. 749.

1442. The aggregate number of enlisted men for the artillery as provided for under this act shall not exceed eighteen thousand nine hundred and twenty, exclusive of electrician sergeants.[1] *Sec. 6, act of February 2 1901, (31 Stat. L., 749).*

---

[1] Section 5 of the act of March 2, 1899 (30 Stat. L., 978), contained the requirement that the additional second lieutenants attached to each regiment of artillery should be transferred to other arms where vacancies existed, without loss of relative rank, leaving but one second lieutenant in each battery of artillery therein authorized.

Electrician sergeants.
Mar. 2, 1899, s. 3, v. 30, p. 978.

1443. In addition to the enlisted men specified there shall be one electrician sergeant to each post garrisoned by coast artillery having electric appliances, who shall have the pay and allowances of an ordnance sergeant.[1] *Sec. 3, act of March 2, 1899 (30 Stat. L., 978).*

Gunners, extra pay.
Feb. 2, 1901, s. 7, v. 31, p. 749.

1444. First-class gunners shall receive two dollars a month and second-class gunners one dollar per month in addition to their pay.[2] *Sec. 7, act of February 2, 1901 (31 Stat. L., 749).*

INFANTRY.

Par.
1445. Infantry regiment.
1446. Colored regiments.
1447. Details, regimental staff, etc.
1448. Band.
Par.
1449. Battalion staff, pay.
1450. Companies.
1451. Increase.

Infantry regiment.
Feb. 2, 1901, s. 10, v. 31, p. 750.
Sec. 1106, R. S.

1445. Each regiment of infantry shall consist of one colonel, one lieutenant-colonel, three majors, fifteen captains, fifteen first lieutenants, and fifteen second lieutenants, one sergeant-major, one quartermaster-sergeant, one commissary-sergeant, three battalion sergeants-major, two color-sergeants, with rank, pay, and allowances of battalion sergeants-major, one band, and twelve companies, organized into three battalions of four companies each.[3] *Sec. 10, act of February 2, 1901 (31 Stat. L., 750).*

Colored regiments.
July 28, 1866, s. 4, v. 14, p. 332.
Sec. 1108, R.S.

1446. The enlisted men of two regiments of infantry shall be colored men.

---

[1] For duties and methods of appointment of electrician sergeants see paragraphs 100–114, Army Regulations of 1901.

[2] Gunners become entitled to this increase from the date of the passage of the act authorizing it.

[3] This enactment replaces section 1106, Revised Statutes, and section 4, act of March 2, 1899 (30 Stat. L., 977), *in pari materia.* Section 28 of the act of February 2, 1901 (31 Stat. L., 755), contained the requirement that "vacancies in the grade of field officers and captain created by this act in the cavalry, artillery, and infantry shall be filled by promotion according to seniority in each branch respectively." For method of filling vacancies created by that enactment in the grades of first and second lieutenant, see paragraphs 1455 and 1456, *post.*

The First Regiment of infantry was authorized by the act of April 30, 1790 (1 Stat. L., 119), the Second by the act of March 3, 1791 (ibid., 222), the Third and Fourth by the act of May 30, 1796 (ibid., 483), the Fifth, Sixth, and Seventh regiments by the act of June 26, 1812 (2 Stat. L., 764), and the number of regiments of infantry was fixed at seven by the act to reduce and fix the military establishment, approved March 2, 1821. The Eighth Regiment was added by the act of July 5, 1838, and the President was authorized, "whenever he may deem it expedient, to cause not exceeding two of the regiments of infantry to be armed and equipped as regiments of riflemen, and one other of the regiments of infantry to be armed and equipped and to serve as a regiment of light infantry." The Ninth and Tenth regiments were author-

Details. Feb. 2, 1901, s. 10, v. 31, p. 750.

1447. Of the officers herein provided, the captains and lieutenants not required for duty with the companies shall be available for detail as regimental and battalion staff officers and such other details as may be authorized by law or regulation.[1] *Sec. 10, act of February 2, 1901 (31 Stat. L., 750).*

Band. March 2, 1899, s. 4, v. 30, p. 977.

1448. Each infantry band shall consist of one chief musician, one principal musician, one drum-major, who shall have the rank, pay, and allowances of a first sergeant, four sergeants, eight corporals, one cook, and twelve privates.[2] *Sec. 4, act of March 2, 1899 (30 Stat. L., 977).*

Battalion staff pay. Feb. 2, 1901, s. 10, v. 31, p. 750.

1449. Battalion adjutants shall receive one thousand eight hundred dollars per annum, and the allowances of first lieutenants mounted; battalion quartermasters and commissaries shall receive one thousand six hundred dol-

---

ized by the act of March 3, 1855 (10 Stat. L., 701). The Eleventh to the Nineteenth regiments, inclusive, were organized by order of the President on May 4, 1861, the organization being confirmed by the act of July 29, 1861 (12 Stat. L., 279). Twenty-five regiments, from the Twentieth to the Forty-fifth, inclusive, were authorized by the act of July 28, 1866, of which four, from the Thirty-eighth to the Forty-first, inclusive, were to be composed of colored men, and four, from the Forty-second to the Forty-fifth, inclusive, were to be composed of men who had been wounded in the line of duty and were to constitute a Veteran Reserve Corps. At the reduction effected in pursuance of section 2 of the act of March 3, 1869 (15 Stat. L., 318), the number of infantry regiments was reduced to twenty-five. In effecting the consolidation required by the act above cited, the designations of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Twelfth, Thirteenth, Twentieth, and Twenty-third regiments were not changed; the Eleventh Regiment was formed, by consolidation, from the Twenty-fourth and Twenty-ninth; the Fourteenth from the Fourteenth and Forty-fifth; the Fifteenth from the Fifteenth and Thirty-fifth; the Sixteenth from the Eleventh and Thirty-fourth; the Seventeenth from the Seventeenth and Forty-fourth; the Eighteenth from the Eighteenth and Twenty-fifth; the Nineteenth from the Nineteenth and Twenty-eighth; the Twenty-first from the Twenty-first and Thirty-second; the Twenty-second from the Twenty-second and Thirty-first; the Twenty-fourth from the Thirty-eighth and Forty-first; the Twenty-fifth from the Thirty-ninth and Fortieth. Five new regiments, from the Twenty-sixth to the Thirtieth, inclusive, were added by section 10, act of February 2, 1901 (31 Stat. L., 750).

The regiments organized prior to the 4th of May, 1861, were composed of ten companies each; those organized by Executive order of that date were each composed of three battalions of eight companies each. The organization prescribed by the act of July 28, 1866, fixed the organization of an infantry regiment at ten companies, of a cavalry regiment at twelve companies, and a regiment of artillery at the same number.

By the act of April 26, 1898 (30 Stat. L., 364), a battalion organization was adopted for the infantry, each regiment being composed of two battalions of four companies each, and of two skeleton, or unmanned companies. Upon a declaration of war by Congress, the President was authorized to organize a third battalion, to be composed of the two skeleton companies and two additional companies. By section 4 of the act of March 2, 1899 (30 Stat. L., 977), the regimental organization of infantry was made to consist of three battalions of four companies each; by section 15 of the same enactment, however, the regimental organization, as it existed on April 1, 1898, was required to be restored by the discharge of supernumerary officers and enlisted men. The artillery regiments were exempted from this reduction.

[1] For regulations respecting the detail and tour of duty of regimental and battalion staff officers, see note to paragraph 1423, *ante.*

[2] Section 10, act of February 2, 1901 (31 Stat. L., 750), contained the requirement that "each infantry band shall be organized as now required by law."

lars per annum and the allowances of second lieutenants, mounted. *Sec. 10, act of February 2, 1901 (31 Stat. L., 750).*

Infantry company. *Ibid.* Sec. 1107, R. S.

1450. Each infantry company shall consist of one captain, one first lieutenant, one second lieutenant, one first sergeant, one quartermaster-sergeant, four sergeants, six corporals, two cooks, two musicians, one artificer, and forty-eight privates, the commissioned officers to be assigned from those hereinbefore authorized.[1] *Ibid.*

Increase. *Ibid.*

1451. The President, in his discretion, may increase the number of sergeants in any company of infantry to six, the number of corporals to ten, and the number of privates to one hundred and twenty-seven, but the total number of enlisted men authorized for the whole Army shall not at any time be exceeded. *Ibid.*

ENGINEERS.

Engineer battalions a part of the line. Feb. 2, 1901, s. 22, v. 31, p. 754.

1452. The enlisted force (of the Corps of Engineers) provided in section eleven of this act and the officers serving therewith shall constitute a part of the line of the Army.[2] *Sec. 22, act of February 2, 1901 (31 Stat. L., 754).*

MAXIMUM STRENGTH.

Maximum strength. Feb. 2, 1901, s. 30, v. 31, p. 756.

1453. The President is authorized to maintain the enlisted force of the several organizations of the Army at their maximum strength as fixed by this act during the present exigencies of the service, or until such time as Congress may hereafter otherwise direct.[3] *Sec. 30, act of February 2, 1901 (31 Stat. L., 756).*

VACANCIES.

Vacancies; how filled. Feb. 2, 1901, s. 28, v. 31, p. 755.

1454. Vacancies in the grade of field officers and captain created by this act, in the cavalry, artillery, and infantry shall be filled by promotion according to seniority in each branch respectively. *Sec. 28, act of February 2, 1901 (31 Stat. L., 755).*

---

[1] See note to paragraph 1445, *ante.*

[2] For requirements of law in respect to the battalions of engineer troops, see the title *Enlisted Men of Engineers* in the chapter entitled THE ENGINEER CORPS.

[3] For the maximum strength referred to in this section, see, as to the cavalry troop, section 2, act of February, 1901 (31 Stat. L., 748), paragraph 1427, *ante;* as to the artillery arm, see section 6, ibid., paragraphs 1437–1440, *ante;* as to the infantry company, see section 10, ibid., paragraphs 1450, 1451, *ante;* as to the engineer company, see section 11, ibid., paragraph 961, *ante;* for a similar authority to increase the strength of the several organizations in time of war, see the act of April 26, 1898 (30 Stat. L., 364). Section 36, act of February 2, 1901 (31 Stat. L., 757), contains the requirement that the "total of the enlisted men of the line of the Army, together with the native force therein authorized, shall not exceed, at any time, one hundred thousand men."

The same. *Ibid.*

1455. Vacancies existing after the promotions have been made shall be provided for as follows: A sufficient number shall be reserved in the grade of second lieutenant for the next graduating class at the United States Military Academy. Persons not over forty years of age who shall have, at any time, served as volunteers subsequent to April twenty-first, eighteen hundred and ninety-eight, may be ordered before boards of officers for such examination as may be prescribed by the Secretary of War, and those who establish their fitness before these examining boards may be appointed to the grades of first or second lieutenant in the Regular Army, taking rank in the respective grades according to seniority as determined by length of prior commissioned service; but no person appointed under the provisions of this section shall be placed above another in the same grade with longer commissioned service, and nothing herein contained shall change the relative rank of officers heretofore commissioned in the Regular Army.[1] *Ibid.*

The same. *Ibid.*

1456. Enlisted men of the Regular Army or volunteers may be appointed second lieutenants in the Regular Army to vacancies created by this act, provided that they shall have served one year under the same conditions now authorized by law for enlisted men of the Regular Army. *Ibid.*

COMPANY COOKS.

Cooks. Mar. 2, 1899, s. 9, v. 30, p. 979.

1457. The cooks authorized by this act shall have the pay and allowances of sergeants of infantry.[2] *Sec. 9, act of March 2, 1899 (30 Stat. L., 979).*

---

[1] See also the act of March 2, 1901 (31 Stat. L., 900), paragraph 578, *ante.*

[2] This enactment repeals and replaces the act of July 7, 1898 (30 Stat. L., 721), which authorized the enlistment of one cook for each troop, battery, and company in the Regular and Volunteer armies of the United States. The person so enlisted as cook was to "take rank as and be allowed the pay of a corporal of the arm of the service to which he belongs, and whose duties in connection with the preparation and serving of the food of the enlisted men of the company, battery, or troop, and with the supervision and instruction of enlisted men hereby authorized to be detailed to assist him, shall be prescribed in the regulations for the government of the Army."

CHAPTER XXXI.

THE UNITED STATES MILITARY ACADEMY—THE ARMY WAR COLLEGE—THE SERVICE SCHOOLS.

Par.
1458–1513. The United States Military Academy.
1514. The Army War College.
1515. The Engineer School.
Par.
1516, 1517. The Artillery School.
1518. The Infantry and Cavalry School.
1519. The Cavalry and Light Artillery School.

THE MILITARY ACADEMY.

Par.
1458–1478. Organization, academic and military staff.
1479–1494. The Corps of Cadets.
1495, 1496. Courts-Martial: Hazing.
1497–1500. The Board of Visitors.
1501–1507. Leaves of absence, purchases, contingent funds.
Par.
1508. The Military Academy band.
1509–1511. General Army service men, Quartermaster's Department.
1512. The Cullum Memorial.
1513. Chapels.

ORGANIZATION: ACADEMIC AND MILITARY STAFF.

Par.
1458. Officers, professors, and instructors.
1459. Assignment of law professor.
1460. Associate professor of mathematics.
1461. Chaplain, appointment and tenure.
1462. Supervision of the Academy.
1463. Appointment of officers and professors.
1464. Selection of officers.
1465. Restriction on detail of graduates.
1466. Rank of superintendent and commandant.
1467. Superintendent to command.
1468. The same, pay and allowances.
Par.
1469. The commandant of cadets.
1470. Command of academic staff.
1471. Professors, pay and allowances.
1472. Master of the sword.
1473. The same, retirement.
1474. Assistant professors, pay and allowances.
1475. The same, assistant instructors of tactics.
1476. Librarian; assistant librarian.
1477. Adjutant.
1478. Quartermaster and commissary of cadets.

Officers, professors, and instructors.

1458. The United States Military Academy at West Point, in the State of New York,[1] shall be constituted as

---

[1] The Military Academy was established in pursuance of authority conferred by the act of March 16, 1802 (2 Stat. L., 137), which contained a requirement authorizing the President to establish a corps of engineers: "The said corps, when so organized, shall be stationed at West Point, in the State of New York, and shall constitute a military academy. Sections 26 and 27, act of March 16, 1802 (2 Stat. L., 137). The post of West Point ceased to be an engineer station and the control of the Military Academy was transferred from the Chief of Engineers to such officer or officers as the Secretary of War may assign to that duty by the act of July 13, 1866 (14 Stat. L., 92.)

Mar. 16, 1802, c. 9, s. 28, v. 2, p. 137; June 12, 1858, c; 156, s. 1, v. 11, p. 333; Apr. 29, 1812. c. 72, s. 2, v. 2, p, 720; Apr. 14, 1818. c. 61, s. 2, v. 3, p, 426; July 20, 1840. c. 50, s. 3, v. 5, p. 398; July 5, 1838. c. 162, s. 19, v. 5, p. 259; Aug. 8, 1846, c. 96, s. 3, v. 9, p. 71; Aug. 6, 1852, c. 81, v. 10, p. 29. Feb. 16, 1857, c. 45, v. 11, p. 161; Mar. 3, 1851, c. 22, v. 9, p. 594; Feb. 28, 1867, c. 100, s. 3, v. 14, p. 416; Feb. 16, 1857, c. 45, v. 11, p. 161; sec. 4, June 23, 1879, v. 21, p. 34; Jan. 16, 1895, v. 28, p. 630; Feb. 18, 1896, v. 29, p. 8.

follows: There shall be one superintendent; one commandant of cadets; one senior instructor in the tactics of artillery; one senior instructor in the tactics of cavalry; one senior instructor in the tactics of infantry; one professor and one assistant professor of civil and military engineering;[1] one professor and one assistant professor of natural and experimental philosophy;[2] one professor and one assistant professor of mathamatics;[3] one professor and one assistant professor of chemistry, mineralogy, and geology;[4] one professor and one assistant professor of drawings;[5] one professor of modern languages;[6] one assistant professor of the French language; one assistant professor of the Spanish language;[7] one assistant professor of law; one adjutant;[8] one master of the sword;[9] and one teacher of music.

Sec. 1309, R. S.

Assignment of law professor.

June 6, 1874, v. 18, p. 60; June 1, 1880, v. 21, p. 153.

1459. The Secretary of War may assign one of the judge-advocates of the Army to be professor of law. *Act of June 6, 1874 (18 Stat. L., 60). Provided*, That the

---

[1] The office of professor of civil and military engineering was established by section 2 of the act of April 29, 1802 (2 Stat. L., 720).

[2] The office of professor of natural and experimental philosophy was established by section 2 of the act of April 29, 1802 (2 Stat. L., 702).

[3] The office of professor of mathematics was established by section 2 of the act of April 29, 1802 (2 Stat. L., 702).

[4] The office of professor of chemistry, mineralogy, and geology was established by section 19 of the act of July 5, 1838 (5 Stat. L., 259).

[5] The office of teacher of drawing, first created by Executive order, received statutory recognition in section 2 of the act of April 29, 1802 (2 Stat. L., 720). The office of professor of drawing was established by section 3 of the act of August 8, 1846 (9 Stat. L., 161).

[6] The office of teacher of French, first established by Executive regulation, received statutory recognition in section 2 of the act of April 29, 1802 (2 Stat., L., 702). The office of professor of French was established by section 3 of the act of August 8, 1846 (9 Stat. L., 161). The act of June 20, 1879 (21 Stat. L., 34), contained the requirement that "when a vacancy occurs in the office of professor of the French language or in the office of professor of the Spanish language in the Military Academy, both these offices shall cease, and the remaining one of the two professors shall be professor of modern languages; and thereafter there shall be in the Military Academy one, and only one, professor of modern languages." On June, 30, 1882, a vacancy having occurred in the office of professor of Spanish, the statute became operative and the offices of professor of French and professor of Spanish were merged, by operation of law, in the office of professor of modern languages. The office of professor of Spanish, created by section 2 of the act of February 15, 1857 (11 Stat. L., 161), ceased to exist, by operation of law, on June 30, 1882, having been merged in the office of professor of modern languages in conformity to section 4 of the act of June 20, 1879 (21 Stat. L., 34).

For notes in respect to the establishment of the offices of instructor of ordnance and gunnery and practical military engineering, see notes 1 and 2 on page 548, *post.*

[7] The offices of assistant professor of civil and military engineering, natural and experimental philosophy, and mathematics were established by section 2 of the act of April 29, 1802 (2 Stat. L., 702); that of chemistry, mineralogy and geology by section 19 of the act of July 5, 1838 (5 Stat. L., 259); those of French and drawing by section 2 of the act of August 6, 1852 (10 Stat. L., 29); that of Spanish by section 3 of the act of February 28, 1857 (14 Stat. L., 416), and that of law by the act of January 5, 1895 (28 Stat. L., 630).

[8] For the status of this office see paragraph 1477, *post.*

[9] For the status of this office see paragraph 1472, *post.*

Secretary of War may, in his discretion, assign any officer of the Army as professor of law.[1] *Act of June 1, 1880* (*21 Stat. L.*, *153*).

Associate professor of mathematics. Pay and allowances. Longevity pay. Mar. 1, 1893, v. 27, p. 515.

1460. There shall be appointed at the Military Academy from the Army, in addition to the professors authorized by the existing laws, an associate professor of mathematics, who shall receive the pay and allowances of a captain mounted, and when his service as associate professor of mathematics at the Academy exceeds ten years, he shall receive the pay and allowances of major; and hereafter there shall be allowed and paid to the said associate professor of mathematics ten per centum of his current yearly pay for each and every term of five years' service in the Army and at the Academy: *Provided*, That such addition shall in no case exceed forty per centum of said yearly pay; and said associate professor of mathematics is hereby placed upon the same footing as regards restrictions upon pay and retirement from active service as officers of the Army. *Act of March 1, 1893* (*27 Stat. L.*, *515*).

Chaplain of the Military Academy. Feb. 18, 1896, v. 29, p. 8.

1461. The duties of chaplain at the Military Academy shall hereafter be performed by a clergyman to be appointed by the President for a term of four years, and the said chaplain shall be eligible for reappointment for an additional term or terms and shall, while so serving, receive the same pay and allowances as are now allowed to a captain mounted.[2] *Act of February 18, 1896* (*29 Stat. L.*, *8*).

SUPERVISION.

Supervision of Academy. July 13, 1866, c. 176, s. 6, v. 14, p. 92. Sec. 1331, R. S.

1462. The supervision and charge of the Academy shall be in the War Department, under such officer or officers as the Secretary of War may assign to that duty.[3]

THE ACADEMIC STAFF.

Appointment of officers and professors.

1463. The superintendent, the commandant of cadets, and the professors shall be appointed by the President.[4] The

---

[1] The acts of June 27, 1881 (21 Stat. L., 319), and June 30, 1882 (22 Stat. L., 125), contain a similar provision.

[2] The office of chaplain was established by the act of April 4, 1818 (3 Stat. L., 426), which authorized the appointment of a chaplain at the Military Academy, who shall also be professor of geography, history, and ethics. By the act of February 18, 1896 (29 Stat. L., 8), the professorship thus authorized was discontinued, the duties of chaplain being performed by the officer whose appointment was authorized by that statute, and the duty of giving instruction in history being transferred by executive regulation to the department of law.

[3] The Military Academy is withdrawn from the control and supervision of department commanders by the terms of paragraph 208, Army Regulations of 1901.

[4] See, for status of these officers, paragraphs 1466, 1469, and 1471, *post.*

Feb. 28, 1803, c. 13, s. 2, v. 2, p. 206; June 12, 1858, c. 156, s. 1, v. 11, p. 333; Apr. 29, 1812, c. 72, s. 2, v. 2, p. 720; July 13, 1866, c. 176, s. 6, v. 14, p. 92. **Sec. 1313, R. S.**

assistant professors, acting assistant professors, and the adjutant shall be officers of the Army, detailed and assigned to such duties by the Secretary of War, or cadets assigned by the superintendent, under the direction of the Secretary of War.

Selection of officers. July 13, 1866, c. 176, s. 6, v. 14, p. 92. **Sec. 1314, R. S.**

1464. The superintendent and commandant of cadets may be selected, and all other officers on duty at the Academy may be detailed, from any arm of the service; but the academic staff as such shall not be entitled to any command in the Army separate from the Academy.

No graduate to be assigned to duty at the Academy within two years after graduation. July 26, 1894, v. 28, p. 151.

1465. Hereafter no graduate of the Military Academy shall be assigned or detailed to serve at said Academy as a professor, instructor, or assistant to either, within two years after his graduation, and so much of the act of June thirtieth, eighteen hundred and eighty-two, as requires a longer service than two years for said assignments or details is hereby repealed.[1] *Act of July 26, 1894* (*28 Stat. L., 151*).

Local rank of superintendent and commandant. June 12, 1858, c. 156, s. 1, v. 11, p. 333. **Sec. 1310, R. S.**

1466. The superintendent and the commandant of cadets, while serving as such, shall have, respectively, the local rank of colonel and lieutenant-colonel of engineers.[2]

Superintendent's command. Mar. 16, 1802, c. 9, s. 28, v. 2, p. 137; Aug. 23, 1842, c. 186, s. 6, v. 5, p. 513. **Sec. 1311, R. S.**

1467. The superintendent, and, in his absence, the next in rank, shall have the immediate government and military command of the Academy, and shall be commandant of the military post of West Point.[3]

---

[1] The act of June 30, 1882 (22 Stat. L., 123), contained the requirement that no graduate of the Military Academy should be assigned or detailed to serve as a professor, instructor, or assistant to either, within four years after his graduation.

[2] The office of superintendent was created by section 28 of the act of March 16, 1802, (2 Stat. L., 137), which contained the requirement that "the principal engineer and, in his absence, the next in rank, shall have the superintendence of the Military Academy under the direction of the President of the United States." So much of the act of March 16, 1802, as restricted the appointment to this office to the Corps of Engineers was replaced by section 6 of the act of July 16, 1866 (14 Stat. L., 92), which vested the supervision of the Academy in the War Department, under such office or officers as the Secretary of War may assign to that duty. By the act of January 12, 1858 (11 Stat. L., 333), the local rank of colonel of engineers was conferred upon the superintendent.

The act of June 20, 1840 (5 Stat. L., 398), contained the requirement that the commander of the corps of cadets should be either the instructor of infantry tactics, of cavalry or artillery tactics, or of practical engineering; and his pay and emoluments were in no case to be less than those allowed by law to the professor of mathematics. By the act of June 12, 1858 (11, ibid., 333), the pay of this officer was fixed at that of a lieutenant-colonel.

[3] The post of West Point is one of the military posts of the United States, and the appropriation for the construction of buildings at military posts is applicable to the erection of such quarters as are for the use of the military post at that place and independent of the Military Academy located there. 5 Compt. Dec., 812; 3 Dig. Dec. Sec. Compt., 216.

Expenditures for the support of the Military Academy must be limited to the amounts appropriated in the acts for the support of the Academy, unless a contrary purpose on the part of Congress clearly appears in its legislation. Ibid., 216.

A sum legally payable out of a specific appropriation can not be transferred to the credit of another appropriation. But this rule does not affect the proper *disburse-*

Commandant of cadets.
June 12, 1858, c. 156, s. 1, v. 11, p. 333.
Sec. 1312, R. S.

1468. The commandant of the cadets shall have the immediate command of the battalion of cadets, and shall be instructor in the tactics of artillery, cavalry, and infantry.

Superintendent and commandant, pay of.
June 12, 1858, c. 157, s. 1, v. 11, p. 333.
Sec. 1334, R. S.

1469. The superintendent of the Military Academy shall have the pay of a colonel, and the commandant of cadets shall have the pay of a lieutenant-colonel.

Command of academic staff.
Sec. 1314, R. S.

1470. The academic staff, as such, shall not be entitled to any command in the Army separate from the Academy.

Pay of professors.
Feb. 28, 1873, c. 210, v. 17, p. 479.
Sec. 4, June 23, 1879, v. 21, p. 34.
Sec. 1336, R. S.

1471. Each of the professors of the Military Academy whose service as professor at the Academy exceeds ten years shall have the pay and allowances of colonel, and all other professors shall have the pay and allowances of lieutenant-colonels;[1] and the instructors of ordnance and

---

ment of the sum appropriated. Thus where, in the Military Academy appropriation act, a certain amount was appropriated for models of guns and carriages, *held*, that the Secretary of War was authorized to transfer this amount for disbursement to the disbursing officer at Watervliet Arsenal, where the models were to be manufactured, instead of leaving the disbursement to the disbursing officer at West Point. Dig. Opin. J. A. G., par. 457.

Residents and visitors at the Academy. No person can be entitled, as a matter of right, to enter within the limits of this post unless he be authorized to do so by the laws of the United States, or by some officer having authority under the law to grant permission to enter such limits. The Superintendent of the Academy, as commandant of this post, has a general authority to prevent any person in civil life residing permanently or temporarily at the post, or occasionally resorting to the post, from interrupting its discipline, or obstructing in any way the performance of the duties assigned by law to the officers and cadets. In the exercise of a sound discretion, the commandant of the post may therefore order from it any person not attached to it by law whose presence is, in his judgment, injurious to the interests of the Academy. And in case any person so ordered shall refuse to depart, after reasonable notice and within a reasonable time, having regard to the circumstances of the case, I think the Superintendent may lawfully remove him by force. III Opin. Att. Gen., 268–273. When, however, the United States have leased a dwelling house within the post belonging to them to an individual, they have no greater right than an individual would have in respect to the ejectment of the lessee. Ibid.

No person has the right to enter the limits of the post of West Point, not even to visit the post-office there, unless specially authorized by the laws of the United States or by some officer having authority to grant permission. Ibid.

The Superintendent of the Military Academy is not in general authorized to arrest and confine in the guardhouse a civilian for a mere breach of the police regulations of the post or Academy. His proper remedy is to have the offender removed as soon as practicable, and without unnecessary force, from the reservation. Dig. Opin. J. A. G., par. 520.

[1] The act of April 29, 1812 (2 Stat. L., 702), conferred upon the professor of natural and experimental philosophy the pay and emoluments of a lieutenant-colonel; and that of major upon the professors of engineering and mathematics. The professor of chemistry, mineralogy, and geology was placed upon the same footing, in respect to pay and emoluments, as the professor of mathematics, by section 19 of the act of July 5, 1838 (5 Stat. L., 259). By the act of March 3, 1851 (9 Stat. L., 594), the pay of the professors of engineering, natural and experimental philosophy, mathematics, and chemistry was fixed at $2,000 per annum, and that of the professors of French and drawing at $1,500 per annum, these sums to be "in lieu of pay proper, ordinary rations, forage, and servants." By section 2 of the act of February 16, 1857 (11 Stat. L., 161), the pay of professor of Spanish was fixed at $2,000 per annum, subject to the restrictions contained in the act of March 3, 1851. By section 13 of the act of July 15, 1870 (16 Stat. L., 319), professors whose service exceeded thirty-five years were to receive the pay and allowances of colonels; those whose service had been less than thirty-five years, but exceeded twenty-five years, were to receive the pay and allowances of lieutenant-colonels, and all other professors were to receive the pay and emoluments of major. By the act of February 28, 1873 (17 Stat. L., 479), professors whose service exceeded ten years were to receive the pay and emoluments

science of gunnery[1] and of practical engineering[2] shall have the pay and allowances of major; and hereafter there shall be allowed and paid to the said professors ten per centum of their current yearly pay for each and every term of five years' service in the Army and at the Academy: *Provided*, That such addition shall in no case exceed forty per centum of said yearly pay; and said professors are hereby placed upon the same footing, as regards restrictions upon pay and retirement from active service, as officers of the Army.

Master of the sword.
Mar. 2, 1901, v. 31, p. 914.
Sec. 1338, R.S.

1472. The master of the sword shall hereafter act as instructor of military gymnastics and physical culture at the Military Academy, and shall have the relative rank and shall be entitled to the pay, allowances, and emoluments of a first lieutenant, mounted: *Provided, however*, That whenever a vacancy shall occur in the office of master of the sword and instructor of military gymnastics and physical culture the said office shall cease and determine, and the duties thereunto pertaining shall thereafter be performed by an officer of the line of the Army to be selected for that purpose by the Secretary of War. *Act of March 2, 1901 (31 Stat. L., 914).*

Retirement of professors.
July 15, 1870, c. 294, s. 13, v. 16, p. 319.
Sec. 1333, R.S.

1473. The professors of the Military Academy at West Point are placed on the same footing, as to retirement from active service, as officers of the Army.

---

of colonels, and all other professors the pay, etc., of lieutenant-colonels. This statute was amended by section 4 of the act of June 23, 1874 (21 Stat. L., 34), so as to require ten years' service as a professor at the Military Academy as a condition precedent to receiving the pay and allowances of colonel.

The professors of the Military Academy do not belong to the staff of the Army within the meaning of section 1205, Revised Statutes, since they have no military rank or grade. The fact that they are authorized by the President to wear the uniform of the rank as of which they are paid does not invest them with such rank. This can be given them by Congress alone. Dig. Opin. J. A. Gen., 615, par. 2.

A captain of cavalry does not vacate his office as such by the acceptance of that of professor of the Military Academy, there being no incompatibility in the functions of the two offices. Ibid., par. 3.

The professors of the Military Academy at West Point are commissioned officers of the Army, whose pay and allowances are assimilated to those of a lieutenant-colonel and a colonel; and in case of such disability as is described in section 4693, Revised Statutes, they are entitled to pensions at the same rate with officers of the rank of lieutenant-colonel. XVII Opin. Att. Gen., 359.

[1] The office of instructor of ordnance and gunnery was established by the Secretary of War, on the recommendation of the academic board, on December 31, 1856; the duties of the former instructor of artillery, which were not connected with instruction in the drill regulations of the arm, being transferred to the office thus established. By the act of June 12, 1858 (11 Stat. L., 333), the duty of instruction in the drill regulations was vested in the commandant of cadets and the assistant instructors authorized by that enactment. An officer of ordnance was assigned to duty as instructor of ordnance and gunnery by Special Orders, No. 31, H. Q. U. S. Military Academy on February 27, 1857.

[2] The office of instructor of practical military engineering was established by section 2 of the act of July 20, 1840 (5 Stat. L., 397); upon the recommendation of the Chief of Engineers, dated April 24, 1844, an officer of engineers was appointed to the office.

Assistant professors and instructors.

1474. Each assistant professor and each senior assistant instructor of cavalry, artillery, and infantry tactics shall receive the pay of a captain.[1]

Apr. 29, 1812, c. 72, s. 2, v. 2, p. 720; July 5, 1838, c. 162, s. 19, v. 5, p. 259; July 20, 1840, c. 50, s. 3, v. 5, p. 398; Aug. 6, 1852, c. 81, s. 2, v. 10, p. 29; June 12, 1858, c. 156, s. 1, v. 11, p. 333; Feb. 28, 1867, c. 100, s. 3, v. 14, p. 416; Feb. 28, 1873, v. 17, p. 479; Jan. 16, 1895, v. 28, p. 630. **Sec. 1337, R. S.**

Pay of assistant instructors of tactics.

Mar. 3, 1875, v. 18, p. 467.

1475. The assistant instructors of tactics commanding cadet companies at West Point shall receive the pay and allowances as assistant professors in the other branches of study.[2] *Act of March 3, 1875 (18 Stat. L., 467).*

Librarian and assistant.

Apr. 23, 1856, c. 19, s. 2, v. 11, p. 5. **Sec. 1340, R. S.**

1476. The librarian and assistant librarian at the Military Academy shall each receive one hundred and twenty dollars a year additional pay.[3]

THE MILITARY STAFF.

Adjutant, pay of.

Mar. 3, 1851, c. 32, s. 1, v. 9, p. 594. **Sec. 1335, R. S.**

1477. The adjutant of the Military Academy shall have the pay of an adjutant of a cavalry regiment.

Quartermaster and commissary of cadets.

Supplies at cost.

Aug. 7, 1876, v. 19, p. 126.

1478. The Secretary of War is hereby directed to detail a competent officer to act as quartermaster and commissary for the battalion of cadets, by whom all purchases and issues of supplies of all kinds for the cadets, and all provisions for the mess, shall be made, and that all supplies of all kinds and description shall be furnished to the cadets at actual cost, without any commission or advance over said cost; and such officer so assigned shall perform all the duties of purveying and supervision for the mess, as now done by the purveyor, without other compensation.[4] *Act of August 7, 1876 (19 Stat. L., 126).*

---

[1] Assistant professors at the Military Academy are entitled to the quarters of captains. IX Opin. Att. Gen., 284. The distinction contended for at the Military Academy between academic and military rank is not allowable in the choice of quarters. 5 ibid., 627.

[2] Section 2 of the act of July 20, 1840 (5 Stat. L., 398), contained the requirement that the pay and emoluments of instructors in cavalry, artillery, and infantry tactics should not be less than was allowed by law (captain mounted) to the assistant professor of mathematics. This statute was replaced by the act of June 12, 1858 (11 Stat. L., 333), which conferred the pay of captain mounted upon the senior assistant instructor in each of the arms of service.

The annual acts of appropriation for the support of the Military Academy, since that of February 10, 1897 29 (Stat. L., 518), have contained a provision for the pay of a senior instructor in the Department of Ordnance and Gunnery. Those since March 5, 1898 (30 Stat. L., 254), have contained a similar provision in respect to the pay of the senior assistant in the Department of Practical Military Engineering.

[3] The annual acts of appropriation from that of February 18, 1871 (16 Stat. L., 414), to that of July 26, 1894 (28 Stat. L., 156), contained a provision authorizing the payment of $1,000 per annum for compensation of the librarian's assistant. In the acts of February 12, 1895 (28 Stat. L., 631), and March 6, 1896 (29 Stat. L., 49), the compensation of the librarian's assistant was fixed at $1,200 per annum.

[4] The annual appropriation acts, since that of March 31, 1884, have contained a provision for extra pay for the quartermaster and commissary of cadets at the rate of $700 per annum, in addition to his pay as a captain of infantry. The act of June 30, 1892 (22 Stat. L., 123), authorizes the Secretary of War to detail a commissary sergeant to act as assistant to the commissary of cadets.

THE CORPS OF CADETS.

Par.
1479. Number and appointment.
1480. Appointment in advance.
1481. Age of appointees.
1482. Qualifications for admission.
1483. Oath.
1484. Engagement for service.
1485. Pay and allowances.
1486. Promotion of graduates, additional second lieutenants.
1487. One additional officer only to each company.
1488. Pay of graduated cadets.
1489. Organization of corps into companies, etc.
1490. Liability to duty.
1491. No study on Sunday.
1492. Instruction in physiology, etc.
1493. The same.
1494. Deficient cadets.

Number and appointment.
June 6, 1900, s. 4, v. 31, p. 650.
Sec. 1315, R.S.

1479. The corps of cadets shall consist of one from each Congressional district, one from each Territory, one from the District of Columbia, two from each State at large, and thirty from the United States at large. They shall be appointed by the President, and shall, with the exception of the thirty cadets appointed from the United States at large, be actual residents of the Congressional or Territorial districts, or of the District of Columbia, or of the States, respectively, from which they purport to be appointed.[1] *Sec. 4, act of June 6, 1900 (31 Stat. L., 656).*

---

[1] The first authorization of the employment of cadets in the military service will be found in the act of May 9, 1794 (1 Stat. L., 366), for raising a corps of artillerists and engineers; the new organization was to be formed by the consolidation of the existing corps of artillery with the additional force therein authorized, and was to consist of four companies, to each of which two cadets were to be attached, with the pay, rations, and clothing of sergeants of artillery. An additional regiment of artillerists and engineers was established by the act of April 27, 1798 (ibid., 552), with the same organization as the regiment already in service; by section 3 of the act of March 3, 1799 (ibid., 750), the pay of cadets was fixed at ten dollars per month, with two rations per day or their equivalent in money; by this enactment ten cadets were allowed for each regiment of cavalry and infantry and thirty-two for each regiment of artillery.

The act to fix the military peace establishment, approved on March 16, 1802 (2 ibid., 132), provided for one regiment of artillerists and engineers; it was to consist of twenty companies, to each of which two cadets were attached. By section 26 of this enactment authority was conferred upon the President to establish a corps of engineers, to which ten cadets were to be attached, and the monthly pay of the cadets was fixed at sixteen dollars and one ration per day; by section 27, the corps of engineers, when organized, was to be stationed at West Point and was to constitute the Military Academy. The acts of April 12, 1808 (2 ibid., 481), and June 11, 1812 (ibid., 671), authorized additions to the military establishment; by the former, 156 cadets were provided for, and by the latter, 64; in neither case, however, was the authorized establishment completed, nor does any considerable number of cadets seem to have been attached to the Military Academy, as is indicated by a report of the superintendent of January 5, 1810, at which date forty-seven cadets were undergoing instruction at the academy. An act making further provision for the Corps of Engineers, approved April 29, 1812 (ibid., 720), fixed the number of cadets in all arms of the service at 250, and authorized the President, in his discretion, to attach them, as students, to the Military Academy. The present apportionment by representative districts was established by section 2 of the act of March 1, 1843 5 (ibid., 604), which required cadets to be selected from the Congressional districts of the States or Territories from which the appointments purported to have been made. By this enactment authority was conferred upon the President to appoint ten cadets at

Appointment in advance.
June 16, 1866, res. 49, s. 1, v. 14, p. 359.
Sec. 1317, R.S.

1480. Cadets shall be appointed one year in advance of the time of their admission to the Academy, except in cases where, by reason of death or other cause, a vacancy occurs which can not be provided for by such appointment in advance; but no pay or other allowance shall be given to any appointee until he shall have been regularly admitted, as herein provided; and all appointments shall be conditional, until such provisions shall have been complied with.[1]

Age of appointees.
June 16, 1866, res. 49, s. 1, v. 14, p. 359.
Sec. 1318, R.S.

1481. Appointees shall be admitted to the Academy only between the ages of seventeen and twenty-two years, except in the following case: Any person who has served honorably and faithfully not less than one year, in either the volunteer or regular service of the United States, in the late war for the suppression of the rebellion, and who possesses

---

large without being restricted to selection from Congressional districts. The act of March 3, 1875 (18 ibid., 467), authorized the President "to fill any vacancy occurring at said academy by reason of death or other cause of any person appointed by him;" but this clause was expressly repealed by section 4 of the act of June 11, 1878 (20 ibid., 111), which restricted the number of appointments at large to ten in all. The acts of March 1, 1843, and section 10 of the act of March 2, 1899 (30 Stat. L., 979), which authorized the appointment of twenty cadets at large, were replaced by section 4 of the act of June 6, 1900 (31 ibid., 656), which fixed the number of cadets at one from each Congressional district, one from the District of Columbia, two from each State at large, and thirty from the United States at large.

[1] *Appointments—How made.*—Each Congressional district and Territory, also the District of Columbia, is entitled to have one cadet at the Academy. Two cadets at large from each State, and thirty from the United States at large are also appointed. The appointments (except those at large) are made by the Secretary of War, at the request of the Representative or Delegate in Congress from the district or Territory; and the person appointed must be an actual resident of the district or Territory from which the appointment is made. Those for a State at large are made, each upon the request of a Senator from the State so entitled. The appointments at large are specially conferred by the President of the United States.

Manner of making applications.—Applications can be made at any time by letter to the Secretary of War, to have the name of the applicant placed upon the register that it may be furnished to the proper Representative or Delegate when a vacancy occurs. The application must exhibit the full name, date of birth, and permanent abode of the applicant, with the number of the Congressional district in which his residence is situated.

Date of appointments.—Appointments are required by law to be made one year in advance of the date of admission, except in cases where, by reason of death or other cause, a vacancy occurs which can not be provided for by such appointment in advance. These vacancies are filled in time for the next annual examination.

Alternates.—The Representative or Delegate in Congress may nominate a legally qualified second candidate, to be designated the alternate. The alternate will receive from the War Department a letter of appointment, and will be examined with the regular appointee, and if duly qualified will be admitted to the Academy in the event of the failure of the principal to pass the prescribed preliminary examinations. The alternate will not be allowed to defer his reporting at West Point until the result of the examination of the regular appointee is known, but must report at the time designated in his letter of appointment. The alternate, like the nominee, should be designated as nearly one year in advance of date of admission as possible.

There being no provision whatever for the payment of the traveling expenses of either accepted or rejected candidates for admission, no candidate should fail to provide himself in advance with the means of returning to his home in case of his rejection before either of the examining boards, as he may otherwise be put to considerable trouble, inconvenience, and even suffering on account of his destitute condition. If admitted, the money brought by him to meet such a contingency can be deposited with the treasurer on account of his equipment as a cadet or returned to his friends.

the other qualifications required by law, may be admitted between the ages of seventeen and twenty-four years.[1]

Examination and qualification.
Apr. 29, 1812, c. 72, s. 3, v. 2, p. 721; June 16, 1866, res. 49, v. 14, p. 359; Mar. 2, 1901, v. 31, p. 911.
Sec. 1319, R. S.

1482. Appointees shall be examined under regulations[2] to be framed by the Secretary of War before they shall be admitted to the Academy and shall be required to be well versed in such subjects as he may from time to time prescribe.[3] *Act of March 2, 1901* (*31 Stat. L.*, *911*).

Oath.
Aug. 3, 1861, c. 42, s. 8, v. 12, p. 288; June 8, 1866, c. 110, s. 2, v. 14, p. 59.
Sec. 1320, R. S.

1483. Each cadet shall, previous to his admission to the Academy, take and subscrbe an oath or affirmation in the following form:

"I, A B, do solemnly swear that I will support the Constitution of the United States, and bear true allegiance to the National Government; that I will maintain and defend the sovereignty of the United States, paramount to any and all allegiance, sovereignty, or fealty I may owe to any State, county, or country whatsoever; and that I will at all times obey the legal orders of my superior officers, and the rules and articles governing the armies of the United States."

And any cadet or candidate for admission who shall refuse to take this oath shall be dismissed from the service.

Engagement for service.
Apr. 29, 1812, c. 72, s. 3, v. 2, p. 721; July 5, 1838, c. 162, s. 28, v. 5, p. 260.
Sec. 1321, R. S.

1484. Each cadet shall sign articles, with the consent of his parents or guardian if he be a minor, [and] if any he have, by which he shall engage to serve eight years unless sooner discharged.

PAY AND ALLOWANCES.

Pay of cadets.
June 30, 1882, v. 22, p. 123; Mar. 1, 1893, v. 27, p. 515.
Sec. 1339, R. S.

1485. Hereafter no cadet shall receive more than at the rate of five hundred and forty dollars a year.[4]

---

[1] It being impossible for a candidate to conform to the conditions of this statute, it is now obsolete and no longer operative.

[2] For regulations prepared in accordance with the foregoing enactment see THE MILITARY ACADEMY REGULATIONS. Circulars containing the same information respecting the physical and mental examinations for admission are furnished candidates and others interested upon applications addressed to the Adjutant of the Military Academy at West Point, New York, or to the Adjutant-General of the Army in Washington.

[3] This enactment replaces the requirements of section 1319, Revised Statutes, act of June 16, 1866 (14 Stat. L., 359), *in pari materia*, which required candidates to "be well versed in reading, writing, and arithmetic, and to have a knowledge of the elements of English grammar, of descriptive geography, particularly that of the United States, and of the history of the United States."

[4] The pay of cadets was fixed by the act of March 16, 1802, 2 Stat. L., 137, at sixteen dollars per month and two rations per day. By the act of March 3, 1857, 11 Stat. L., 252, their pay was fixed at thirty-two dollars per month. Section 3 of the act of April 1, 1864, 13 Stat. L., 39, contained the requirement that the cadets at the Military Academy should receive the same pay (five hundred dollars per annum) as the midshipmen at the Naval Academy; section 2 of the act of February 28, 1867, 14 Stat. L., 416, contained the requirement that they should also be entitled to the ration (one hundred and nine dollars and fifty cents annual commutation value) then allowed to active midshipmen. This fixed the pay and emoluments of a cadet

GRADUATION AND APPOINTMENT.

1486. That when any cadet of the United States Military Academy has gone through all its classes and received a regular diploma from the academic staff, he may be promoted and commissioned as a second lieutenant in any arm or corps of the Army in which there may be a vacancy and the duties of which he may have been judged competent to perform; and in case there shall not at the time be a vacancy in such arm or corps, he may, at the discretion of the President, be promoted and commissioned in it as an additional second lieutenant, with the usual pay and allowances of a second lieutenant, until a vacancy shall happen.[1] *Act of May 17, 1886 (24 Stat. L., 50).*

Graduates to be commissioned, if competent, in any arm or corps in which vacancy exists.

To be additional second lieutenants if no vacancy exists.

May 17, 1886, v. 24, p. 50.

Sec. 1213, R.S.

1487. Only one supernumerary officer shall be attached to any company at the same time under the provisions of the preceding section.[2]

But one supernumerary officer to be attached to each company.

Apr. 29, 1812, v. 2, p. 721; Aug. 4, 1854, v. 10, p. 575.

Sec. 1215, R.S.

1488. That every cadet who has heretofore graduated or may hereafter graduate at the West Point Military Academy, and who has been or may hereafter be commissioned a second lieutenant in the Army of the United States, under the laws appointing such graduates to the Army, shall be allowed full pay as second lieutenant from the date of his graduation to the date of his acceptance of and qual-

To receive pay from date of graduation.

Dec. 20, 1886, v. 24, p. 351.

---

at $609.50 per annum. The act of June 30, 1882, 27 Stat. L., 515, contained the requirement that no cadet should thereafter "receive more than at the rate of five hundred and forty dollars a year."

Four dollars a month shall be deposited with the Treasurer from the pay of each cadet, to be applied, at the time of his promotion, to the purchase of a uniform and equipments. Par. 117, Reg. U. S. M. A., 1894.

A person appointed to a position in the Army, either as a cadet or an officer, becomes a cadet or officer de facto when he accepts the appointment; but, in view of the act of July 2, 1862, 12 Stat. L., 502, his pay can not commence until he takes the oath of office. When a candidate passes the examinations and enters upon the duties of a cadet, he thereby accepts his appointment, and his service in the Army begins for all purposes of longevity, but his pay can not commence until he takes the oath of office required by law. 3 Dig. 2nd Compt. Dec., par. 884. The requirements of section 1310 of the Revised Statutes that "no person who has served in any capacity in the military or naval service of the so-called Confederate States, or of either of the States in insurrection during the late rebellion shall be appointed a cadet," were repealed by the act of March 31, 1896, 29 Stat. L., 84.

[1] The requirement of section 3 of the act of June 18, 1878, 20 Stat. L., 150, "That hereafter all vacancies in the grade of second lieutenant shall be filled by appointment from the graduates of the Military Academy so long as any such remain in service unassigned; and any vacancies thereafter remaining shall be filled by promotion of meritorious noncommissioned officers of the Army, recommended under the provisions of the next section of this act: *Provided*, That all vacancies remaining, after exhausting the two classes named, may be filled by appointment of persons in civil life," was repealed by section 5 of the act of July 30, 1892, 27 Stat. L., 336. See the chapter entitled COMMISSIONED OFFICERS.

[2] The Secretary of War is authorized to assign recent graduates, noncommissioned officers, and civilians to the cavalry or infantry, although "additional" second lieutenants remain in the engineers and artillery, and no vacancies exist in the last-named branches. XX Opin. Att. Gen., 149.

ification under his commission and during his graduation leave, in accordance with the uniform practice which has prevailed since the establishment of the Military Academy. *Act of December 20, 1886 (24 Stat. L., 351).*

INSTRUCTION.

Cadet battalion.
Apr. 29, 1812, c. 72, s. 3, v. 2, p. 721; July 13, 1866, c. 176, s. 6, v. 14, p. 92.
Sec. 1322, R. S.

1489. The corps of cadets shall be arranged into companies, according to the directions of the superintendent, each of which shall be commanded by an officer of the Army, for the purpose of military instruction. To each company shall be added four musicians. The corps shall be taught and trained in all the duties of a private soldier, noncommissioned officer, and officer, shall be encamped at least three months in each year, and shall be taught and trained in all the duties incident to a regular camp.

Where to do duty.
Mar. 16, 1802, c. 9, s. 27, v. 2, p. 137.
Sec. 1323, R. S.

1490. Cadets shall be subject at all times to do duty in such places and on such service as the President may direct.

No studies on Sunday.
July 15, 1870, c. 294, s. 21, v. 16, p. 319.
Sec. 1324, R. S.

1491. The Secretary of War shall so arrange the course of studies at the Academy that the cadets shall not be required to pursue their studies on Sunday.[1]

Study of effects of alcoholic drinks and narcotics.
May 20, 1886, v. 24, p. 69.

1492. The nature of alcoholic drinks and narcotics, and special instruction as to their effects upon the human system, in connection with the several divisions of the subject of physiology and hygiene, shall be included in the branches of study taught in the common or public schools and in the military and naval schools, and shall be studied and taught as thoroughly and in the same manner as other like required branches are in said schools, by the use of text-books in the hands of pupils where other branches are thus studied in said schools, and by all pupils in all said schools throughout the Territories, in the Military and Naval Academies of the United States, and in the District of Columbia, and in all Indian and colored schools in the Territories of the United States. *Act of May 20, 1886 (24 Stat. L., 69).*

Enforcement.
Sec. 2, May 20, 1886, v. 24, p. 69.

1493. It shall be the duty of the proper officers in control of any school described in the foregoing section to enforce the provisions of this act; and any such officer, school director, committee, superintendent, or teacher who shall refuse or neglect to comply with the requirements of this act, or shall neglect or fail to make proper provisions for the instruction required and in the manner specified by the first section of this act, for all pupils in each and every school under his jurisdiction, shall be removed from office, and the vacancy filled as in other cases. *Sec. 2, act of May 20, 1886 (24 Stat. L., 69).*

---

[1] The course of study at the Military Academy is fixed, in part by the statutes creating the several departments of instruction (paragraphs 1458 and 1459, *ante*) and other enactments of Congress (paragraph 1492, *post*), and in part by Executive regulation.

Deficient cadets.
Aug. 3, 1861, c. 42, s. 8, v. 12, p. 288.
Sec. 1325, R. S.

1494. No cadet who is reported as deficient, in either conduct or studies, and recommended to be discharged from the Academy shall, unless upon reccommendation of the academic board, be returned or reappointed or appointed to any place in the Army before his class shall have left the Academy and received their commissions.[1]

COURTS-MARTIAL.

Courts-martial for trial of cadets.
Mar. 3, 1873, c. 270, v. 17, p. 604.
Sec. 1326, R.S.

1495. The Superintendent of the Military Academy shall have power to convene general courts-martial for the trial of cadets, and to execute the sentences of such courts, except the sentences of suspension and dismission, subject to the same limitations and conditions now existing as to other general courts-martial.[2]

---

[1] Where a cadet was, by order of the Secretary of War, on the recommendation of the academic board, discharged from the Military Academy for deficiency in studies; *Held,* (1) that the order of discharge, having been completely executed, is beyond the power of revocation; (2) that section 1325, Revised Statutes, prohibits the returning or reappointing of the cadet to the Academy, except upon the recommendation of the academic board; (3) that Congress may thus limit or restrict the authority of the President to appoint cadets; (4) that accordingly it is not competent for the President to revoke the said order or to restore the cadet to the Academy, irrespective of the recommendation of the academic board. XVII Opin. Att. Gen., 67.

A cadet applied to have his name changed on the register of the Military Academy; *Held,* that the Secretary of War would not be empowered to change the name as such, though he might make a new contract with the cadet in the new name. But *advised,* as the preferable mode of proceeding, that the cadet first procure the name to be changed in the mode prescribed by the statutes of his own State, after which the register would of course be made to correspond. Dig. Opin. J. A. G., par. 657.

[2] These courts have the same composition as the general courts-martial authorized to be convened by the seventy-second and seventy-third articles of war.

Professors of the Military Academy are "commissioned officers of the Army." Decision of the Secretary of War, May 27, 1857. But they are not commissioned officers within the meaning of the seventy-fifth article of war, and therefore can not be detailed as members of courts-martial. Scott's Digest, paragraph 169, note 16. The President may, by his regulations of the civil police of the Academy, invest them with authority adequate to all the purposes of their professorships; but he can invest them with no portion of judicial power to affect the life or liberty of others. I Opin. Att. Gen., 469; see also last clause of paragraph 1463, *ante.*

The undergraduate cadets are not commissioned officers, and are, therefore, not competent to sit on a court-martial, and are triable by a regimental or garrison court-martial. VII Opin. Att. Gen., 323. In their internal academic organization as officers, noncommissioned officers, and privates they are not subject to the Articles of War as respects their relation to one another, but only as respects their relation to commissioned officers of the Army, on duty as such at the Academy. Ibid.

Cadets are amenable to trial by court-martial for violations of the regulations of

Hazing. Mar. 2, 1901, v. 31, p. 911.

1496. The Superintendent of the Military Academy shall make such rules, to be approved by the Secretary of War, as will effectually prevent the practice of hazing; and any cadet found guilty of participating in or encouraging or countenancing such practice shall be summarily expelled from the Academy and shall not thereafter be reappointed to the Corps of Cadets or be eligible for appointment as a commissioned officer in the Army or Navy or Marine Corps, until two years after the graduation of the class of which he was a member.[1] *Act of March 3, 1901 (31 Stat. L., 911).*

---

the Academy, (*a*) as "conduct to the prejudice of good order and military discipline." Dig. Opin. J. A. G., par. 654.

They are not the "noncommissioned officers" of the acts of Congress and the General Regulations of the Army, which expression means "sergeants and corporals," and is inapplicable to the cadets. Ibid. They are inchoate officers of the Army, and subject to no discipline incompatible with that character. Ibid.

Where a cadet at West Point is sentenced by a court-martial to be dismissed the service, and the President commutes the sentence to suspension for a fixed period, it will not be inferred that his purpose was to deprive him of pay unless it is expressly so stated or is clearly established that such was his purpose. Conrad *v.* U. S., 32 Ct. Cls., 139. Where the President commutes the sentence of one cadet to suspension and of another to suspension without pay it is conclusive that he did not intend the former sentence to extend to loss of pay. Ibid.

The Superintendent of the Military Academy can have no power, by virtue of a regulation of the Academy, to try and punish a cadet for a military offense for which, under the Articles of War, he is amenable to trial by court-martial. A regulation assuming to confer upon him such power would be in contravention of law and inoperative. Otherwise of a regulation which merely authorized a measure of school discipline. So, where a cadet, on arraignment for a military offense, pleaded in bar that he had already for the same offense been punished by reduction from cadet officer to cadet private, under par. 107, Academy Regulations, *held* that, regarding such reduction as a form of discipline only, the plea was properly overruled by the court. Dig. Opin. J. A. G., par. 656.

[1] This enactment replaces the penalty imposed by the act of March 31, 1854 (23 Stat. L., 7). Under the authority conferred by this statute regulations have been prepared by the Superintendent and promulgated with the approval of the Secretary of War. See paragraphs 125, 136, 137, and 140, Regulations for U. S. Military Academy.

In a case arising at the Naval Academy, under the act of June 23, 1874, it was held by the Attorney-General (XVIII Opin. Att. Gen., 292) that the offense of hazing, not being an offense at the common law, and not being defined by statute, the definition of the offense must be gleaned from the rules and regulations of the Naval Academy that were in force at the date of the passage of the act in question. It was also held "that, to constitute the offense of hazing under the statute, it is essential that the victim of the maltreatment should be a new cadet of the fourth class."

Where a cadet entered the Naval Academy and became a member of the fourth class in 1885, and also remained a member of the same class in 1886, he is at the latter period as much an "older cadet" within the definition of the offense of "hazing" as a cadet who, having entered the Academy at the same time (1885), has since been advanced to a higher class, and (equally with the latter) is capable of committing that offense. (*b*) XVIII Opin. Att. Gen., 507.

---

a ACADEMIC REGULATIONS.

The regulations of the Military Academy may be altered by the Secretary of War with the approbation of the President. I Opin. Att. Gen., 469.

b In this connection may be noted the opinion of the Solicitor-General (XV Opins., 634), that, except for the offense of hazing, specially made punishable by the act of June 23, 1874, cadets of the Naval Academy are not subject to trial by court-martial.

THE BOARD OF VISITORS.

Par.
1497. Appointment.
1498. Duties.
Par.
1499. Compensation.
1500. The same, mileage, per diem.

Board of visitors.
Aug. 8, 1848, c. 96, s. 2, v. 9, p. 71; Mar. 16, 1868, c. 30, s. 1, v. 15, p. 42; Feb. 21, 1870, c. 18, v. 16, p. 67.
Sec. 1327, R.S.

1497. There shall be appointed every year, in the following manner, a board of visitors, to attend the annual examination of the Academy: Seven persons shall be appointed by the President, and two Senators and three members of the House of Representatives shall be designated as visitors, by the Vice-President, or President pro tempore of the Senate, and the Speaker of the House of Representatives, respectively, at the session of Congress next preceding such examination.

Duties of visitors.
Aug. 8, 1848, c. 96, s. 2, v. 9, p. 71; Feb. 21, 1870, c. 18, v. 16, p. 67.
Sec. 1328, R.S.

1498. It shall be the duty of the board of visitors to inquire into the actual state of the discipline, instruction, police administration, fiscal affairs, and other concerns of the Academy. The visitors appointed by the President shall report thereon to the Secretary of War, for the information of Congress, at the commencement of the session next succeeding such examination, and the Senators and Representatives designated as visitors shall report to Congress, within twenty days after the meeting of the session next succeeding the time of their appointment, their action as such visitors, with their views and recommendations concerning the Academy.

Compensation.
Aug. 8, 1848, c. 96, s. 2, v. 9, p. 71; Feb. 21, 1870, c. 18, v. 16, p. 67; Mar. 3, 1877, c. 109, v. 19, p. 382.
Sec. 1329, R.S.

1499. No compensation shall be made to the members of said board beyond the payment of their expenses[1] for board and lodging while at the Academy, and an allowance, not exceeding eight cents a mile, for traveling by the shortest mail-route from their respective homes to the Academy, and thence to their homes.[2]

Compensation.
June 11, 1878, v. 20, p. 110.

1500. Hereafter the expenses allowed by section thirteen hundred and twenty-nine of the Revised Statutes shall be paid as follows: Each member of the board of visitors shall receive not exceeding eight cents per mile for each mile traveled by the most direct route from his residence to West Point and return, and shall in addition receive five dollars per day for expenses during each day of his service at West Point.[2] *Act of June 11, 1878 (20 Stat. L., 110).*

---

[1] The amount payable under this paragraph for expenses is, by the act of June 11, 1878, par. 1500, *post*, limited to $5 per day.

[2] Under section 1339 of the Revised Statutes, as amended by the acts of March 3, 1877 (19 Stat. L., 382), and June 11, 1878 (20 Stat. L., 110), the mileage of the board of visitors must be computed by "the most direct route" from their respective homes to West Point and return, and not by the "shortest mail route." 3 Dig. 2nd Compt. Dec., par. 830.

LEAVES OF ABSENCE—PURCHASES—CONTINGENT FUNDS.

Par.
1501. Leaves of absence.
1502. Documents for library.
1503. Government publications.
1504. Purchases of supplies.
Par.
1505. Purchases of books for library.
1506. Contingencies of Superintendent.
1507. Contingent fund.

Leaves of absence.
July 2, 1864. Res. 67, v. 13, p. 416.
Sec. 1330, R.S.

1501. Leave of absence may be granted by the Superintendent, under regulations prescribed by the Secretary of War, to the professors, assistant professors, instructors, and other officers of the Academy, for the entire period of the suspension of the ordinary academic studies, without deduction from pay or allowances.

Congressional documents to library.
Apr. 23, 1856, c. 19, s. 3, v. 11, p. 5.
Sec. 1332, R.S.

1502. The Secretary of the Senate shall furnish annually to the library of the Academy one copy of each document published, during the preceding year, by the Senate.

Government publications.
Sec. 98, Jan. 12, 1895, v. 28, p. 624.

1503. The libraries of the eight Executive Departments, of the United States Military Academy, and United States Naval Academy are hereby constituted designated depositories of Government publications, and the superintendent of documents shall supply one copy of said publications, in the same form as supplied to other depositories, to each of said libraries. *Sec. 98, act of January 12, 1895 (28 Stat. L., 624).*

Purchases for library.
Mar. 6, 1896, v. 29, p. 52.

1504. For increase and expense of the library, namely: For periodicals, stationery, binding books, and scientific, historical, biographical, and general literature, to be purchased in open market on the written order of the Superintendent, [two thousand dollars].[1] *Act of March 6, 1896 (29 Stat. L., 52).*

Purchases of scientific and technical supplies.
Mar. 6, 1896, v. 29, p. 52.

1505. That all technical and scientific supplies for the departments of instruction of the Military Academy shall be purchased by contract or otherwise, as the Secretary of War may deem best.[1] *Act of June 6, 1900 (31 Stat. L., 645).*

---

[1] The annual acts of appropriation since that of May 1, 1888 (25 Stat. L., 112) have contained this provision.

An appropriation for a library is a specific appropriation for books and other publications necessary or appropriate therefor. (VI Compt. Dec., 736.)

CLERKS AND EMPLOYEES.

The employment of clerical and other services is regulated by the annual acts of appropriation. That of February 27, 1891, contains provision—

For pay of the master of the sword, one thousand five hundred dollars; (*a*)

For pay of one teacher of music, one thousand and eighty dollars; (*a*)

For clerk to the disbursing officer and quartermaster, one thousand five hundred dollars;

---

[a] This salary is fixed by law. See paragraph 1472, *ante*.

CONTINGENT FUNDS.

1506. For contingencies for Superintendent of the Academy, one thousand dollars.[1] *Act of March 6, 1896 (29 Stat. L., 49).*

Contingencies of Superintendent.
Mar. 6, 1896, v. 29, p. 49.

1507. All funds arising from the rent of the hotel on Academy grounds, and other incidental sources, from and after this date be, and are hereby, made a special contingent fund, to be expended under the supervision of the Superintendent of the Academy, and that he be required to account for the same, annually, accompanied by proper

Contingent fund.
May 1, 1888, v. 25, p. 112; Mar. 21, 1893, v. 27, p. 520.

[Footnote—Continued.]

For clerk to adjutant in charge of cadet records, one thousand five hundred dollars;
For one clerk to the adjutant, one thousand two hundred dollars;
For clerk to treasurer, one thousand five hundred dollars;
For one clerk to the quartermaster, one thousand two hundred dollars;
For pay of librarian's assistant, one thousand five hundred dollars;
For pay of one superintendent of gas works, one thousand five hundred dollars;
For pay of engineer of heating and ventilating apparatus for the academic building, the cadet barracks and office building, cadet hospital, chapel, and philosophical building, including the library, one thousand five hundred dollars;
For pay of assistant engineer of same, one thousand dollars;
For pay of eight firemen, four thousand eight hundred dollars;
For pay of one draftsman in department of civil and military engineering, one thousand dollars;
For pay of mechanic employed in chemical and geological section rooms and in lecture rooms, one thousand dollars;
For pay of mechanic assistant in department of natural and experimental philosophy, one thousand dollars;
For pay of custodian of new Academy building, one thousand dollars;
For pay of one electrician, nine hundred dollars;
For pay of one civilian plumber, one thousand two hundred dollars;
For pay of one assistant plumber, six hundred dollars;
For pay of one scavenger, at sixty dollars a month, seven hundred and twenty dollars;
For compensation of chapel organist, two hundred dollars;
For pay of keeper of post cemetery, seven hundred and twenty dollars;
For pay of engineer and janitor for Memorial Hall, nine hundred dollars;
For pay of printer at Headquarters U. S. Military Academy, one thousand two hundred dollars;
In all, for civilians employed at the Military Academy, thirty thousand five hundred and twenty dollars.

[1] Any appropriation for contingencies for the Superintendent of the Military Academy is available for such casual expenses as are necessary, or at least appropriate and convenient, in order to the performance of the duties required by law of the Superintendent. * * * The certificate of the Superintendent, as to the correctness and justness of expenditures from the appropriation for contingencies for said Superintendent may be accepted in the adjustment and settlement of Military Academy accounts. (3 Dig. 2nd Compt. Dec., par. 828.) This provision has been repeated in the annual appropriation acts from that of February 2, 1869, to that of March 6, 1886, with the exception of those from August 7, 1876, to January 27, 1881.

All accounts for the expenditure of public moneys should be itemized so far as practicable, and a discretion given to the officer having control of an appropriation does not dispense with this requirement. Expenditures for contingencies of the Superintendent of the Naval Academy, appropriated by the act of March 3, 1897 (29 Stat. L., 662), should be made by the Superintendent, under the general direction of the Secretary of the Navy. (IV Compt. Dec., 159.)

An appropriation for contingencies for the Superintendent of the Military Academy is an appropriation for purposes of a contingent character—that is, such as might or might not happen, and which Congress could not easily foresee, and therefore could not provide for definitely. (III Dig. Dec. 2 Compt., par. 827.)

vouchers to the Secretary of War. *Act of May 1, 1888* (*25 Stat. L., 112*). *Provided*, That all proceeds of the sale of gas shall be paid into the post fund. *Act of March 1, 1893* (*27 Stat. L., 520*).

THE MILITARY ACADEMY BAND.

Organization, pay, etc. Mar. 2, 1901, v. 31, p. 912.

1508. The Military Academy Band shall hereafter consist of one teacher of music, who shall be the leader of the band, and of forty enlisted musicians. The teacher of music shall receive the pay of a second lieutenant, not mounted; and of the enlisted musicians of the band, twelve shall each receive thirty-four dollars per month, twelve shall each receive twenty-five dollars per month, and the remaining sixteen shall each receive seventeen dollars per month, and each of the aforesaid enlisted men shall also be entitled to the clothing, fuel, rations, and other allowances of musicians of cavalry; and the said teacher of music and the enlisted musicians of the band shall be entitled to the same benefits in respect to pay, emoluments, and retirement arising from longevity, reenlistment, and length of service as are, or may hereafter become, applicable to other enlisted men of the Army.[1] *Act of March 2, 1901* (*31 Stat. L., 912*).

GENERAL ARMY SERVICE MEN, QUARTERMASTER'S DEPARTMENT.

Par.
1509. Organization.
1510. Restriction on strength.
Par.
1511. Pay of certain enlisted men.

General Army Service men, etc. June 20, 1890, v. 26, p. 167.

1509. The enlisted men known as the artillery detachment at West Point shall be mustered out of the service as artillery men and immediately reenlisted as Army Service men in the Quartermaster's Department, continuing to perform the same duties and to have the same pay, allowances, rights, and privileges, and subject to the rules, regulations, and laws in the same manner as if their service had been continuous in the artillery, and their said service shall be considered and declared to be continuous in the Army.[2] *Act of June 20, 1890* (*26 Stat. L., 167*).

---

[1] This enactment replaces sections 1111 and 1278, Revised Statutes, and the act of March 3, 1877 (19 Stat. L., 380), *in pari materia*.

[2] The act of June 20, 1890 (26 Stat. L. 167), which changed the name of the artillery detachment at West Point to "Army Service men in the Quartermaster's Department," contemplated only a change of name of the corps, without affecting their duties, pay, or allowances, including extra duty and extra pay therefor. (IV Compt. Dec., 353.) The act of June 6, 1900 (31 Stat. L., 647), makes provision for the pay of an artillery detachment of forty enlisted men.

1510. The detachments of enlisted men at the Military Academy, heretofore designated as the General Army Service, Quartermaster's Department, and the cavalry detachment, shall be fixed at such numbers, not exceeding two hundred and fifteen enlisted men in both detachments, as in the opinion of the Secretary of War the necessities of the public service may from time to time require; but the number of enlisted men of the Army shall not be increased on account of this proviso or the two preceding paragraphs of this act.[1] *Act of February 10, 1897 (29 Stat. L., 519).*

Limit of strength.
Feb. 10, 1897, v. 29, p. 519.

1511. The noncommissioned officer in charge of mechanics and other labor at the Military Academy, the soldier acting as clerk in the adjutant's office, and the four enlisted men in the philosophical and chemical departments and lithographic office, shall receive fifty dollars a year additional pay.[2]

Pay of certain enlisted men.
Apr. 23, 1856, c. 19, s. 2, v. 11, p. 5.
Sec. 1341, R.S.

THE CULLUM MEMORIAL HALL.

1512. The Memorial Hall to be erected under the provisions of this act shall be a receptacle of statues, busts, mural tablets, and portraits of distinguished and deceased officers and graduates of the Military Academy, of paintings of battle scenes, trophies of war, and such other objects as may tend to give elevation to the military profession; and to prevent the introduction of unworthy subjects into this hall the selection of each shall be made by not less than two-thirds of the members of the entire academic board of the United States Military Academy, the vote being taken by ayes and nays and to be so recorded. *Sec. 6, act of July 23, 1892 (27 Stat. L., 262).*

Purpose of the Memorial Hall.
Sec. 6, *ibid.*

---

[1] The act of April 26, 1898 (30 Stat. L., 365), which provides that in time of war no additional compensation shall be allowed to soldiers performing what is known as "extra or special duty," applies to enlisted men at the Military Academy. 4 Dec. Compt., 616.

The act of July 26, 1894 (28 Stat. L., 155), conferred authority upon the Secretary of War to increase the strength of this detachment to one hundred and fifty men. The act of March 6, 1896 (29 Stat. L., 48), fixes the strength of the cavalry detachment as follows: One first sergeant, five sergeants, four corporals, two farriers, one saddler, one wagoner, and fifty-two privates. The authorized strength of these detachments is now 215 enlisted men.

[2] The act of March 6, 1896 (29 Stat. L., 48), contains an appropriation for the payment of extra-duty pay to seventeen enlisted men with the proviso that none of the money so appropriated shall be paid to any enlisted man who receives extra-duty pay under existing laws or Army Regulations. The acts of June 20, 1890 (26 Stat. L., 167), March 2, 1891 (26 Stat. L., 820), July 14, 1892 (27 Stat. L., 171), March 1, 1893 (27 Stat. L., 520), July 26, 1894 (28 Stat. L., 155), and January 16, 1895 (28 Stat. L., 631), contain similar restrictions.

BUILDINGS FOR RELIGIOUS WORSHIP.

Buildings for religious worship.
July 8, 1898, v. 30, p. 722.

1513. The Secretary of War, in his discretion, may authorize the erection of a building for religious worship by any denomination, sect, or religion on the West Point Military Reservation: *Provided*, That the erection of such building will not interfere with the uses of said reservation for military purposes. Said building shall be erected without any expense whatever to the Government of the United States, and shall be removed from the reservation, or its location changed by the denomination, sect, or religious body erecting the same whenever, in the opinion of the Secretary of War, public or military necessity shall require it, and without compensation for such building or any other expense whatever to the Government. *Act of July 8, 1898 (30 Stat. L., 722).*

THE ARMY WAR COLLEGE.

THE SERVICE SCHOOLS.

Par.
1514. The Army War College.
1515. The U. S. Engineer School.
1516. The Artillery School.
1517. Sewers, wharves, streets, repairs.
Par.
1518. The U. S. Infantry School.
1519. The Cavalry and Light Artillery School.

THE ARMY WAR COLLEGE.

War College; purpose.
May 26, 1900, v. 31, p. 209.

1514. For the establishment of the Army War College, having for its object the direction and coordination of the instruction in the various service schools, extension of the opportunities for investigation and study in the Army and militia of the United States, and the collection and dissemination of military information, twenty thousand dollars. *Act of May 26, 1900 (31 Stat. L., 209).*

THE UNITED STATES ENGINEER SCHOOL[1] AT WILLETTS POINT, N. Y.

Designation and purpose.
May 26, 1900, v. 31, p. 216.

1515. For purchase of materials for use of the United States Engineer School and for the instruction of engineer troops at Fort Totten, Willets Point, in their special duties as sappers, miners, for land and submarine mines, and pontoniers, torpedo drill, and signaling, one thousand five hundred dollars; for purchase and binding of professional works of recent date treating of military and civil engineering and kindred scientific subjects, for the library of the United States Engineering School, five hundred dollars. *Act of May 26, 1900 (31 Stat. L., 216).*

---

[1] The U. S. Engineer School was established by Executive order, but has been recognized in the several acts of appropriation. See acts of March 3, 1871, 16 Stat. L., 523; March 3, 1873, 17 Stat. L., 546; June 16, 1874, 18 Stat. L., 74; July 24, 1876, 19 Stat L., 100; March 3, 1878, 20 Stat. L., 32; March 3, 1879, ibid., 467; May 4, 1880, 21 Stat. L., 13; February 24, 1881, ibid., 349; June 30, 1882, 22 Stat L., 121; March 3, 1883, ibid., 459; July 5, 1884, 23 Stat. L., 112; March 3, 1885, ibid., 434; June 30, 1886, 24 Stat. L., 98; February 9, 1887, ibid., 400; September 22, 1888, 25 Stat. L. 487; March 2, 1889, ibid., 832; June 13, 1890, 26 Stat. L., 155; February 24, 1891, ibid., 778; July 16, 1892, 27 Stat. L., 181; February 29, 1893, ibid., 485; August 6, 1894, 28 Stat. L., 241; February 12, 1895 ibid, 662, March 16, 1896 29 Stat. L., 67; March 2, 1897, ibid., 617; and March 15, 1898, 30, ibid, 325.

THE UNITED STATES ARTILLERY SCHOOL[1] AT FORT MONROE, VA.

1516. To provide means for the theoretical and practical instruction at the Artillery School at Fortress Monroe, Virginia, * * * by the purchase of text-books, books of reference, scientific and professional papers, and for all other absolutely necessary expenses, to be allotted in such proportions as may, in the opinion of the Secretary of War, be for the best interest of the military service, eight thousand dollars. *Act of May 26, 1900 (31 Stat. L., 205).*

Designation and purpose.
May 26, 1900, v. 31, p. 205.

1517. The Secretary of War is hereby further authorized to assess upon vessels using the wharf at Fort Monroe, Virginia, one-half of the actual cost of repairs rendered necessary by the ordinary wear and tear of said wharf, and any damage done to said wharf by any vessel shall be paid for by the owner or owners of said vessel; and he is also authorized and directed from time to time to cause to be assessed upon and collected from the owners of non-military buildings situated within the limits of the Fort Monroe Military Reservation, and from individuals or corporations engaged in business thereat, other than water navigation companies, one-half of such sum or sums of

Charges for wharfage.

Charges for street repairs, etc.
Aug. 1, 1894, v. 28, p. 212.

---

[1] The Artillery School was established at Fortress Monroe, Va., in pursuance of General Orders, No. 18, Adjutant-General's Office, of April 5, 1824. It ceased to exist, in 1835, by reason of the transfer of the troops composing the school to other duties. It was reestablished by General Orders, No. 9, Adjutant-General's Office, of October 30, 1856. A code of regulations and plan of instruction was approved by the Secretary of War and published to the Army in General Orders, No. 5, Adjutant-General's Office, of May 18, 1858. The school was again discontinued at the outbreak of the war of the rebellion in 1861. It was again organized on its present foundation by General Orders, No. 99, Adjutant-General's Office, of November 13, 1867. Although not created by statute, its existence has been recognized and the courses of study pursued have been sanctioned by Congress in several acts of appropriation. See acts of June 20, 1878, 20 Stat. L., 223; March 3, 1879, ibid., 389; March 3, 1881, 21 Stat. L., 445; August 7, 1882, 22 Stat. L., 320; March 3, 1883, ibid., 618; July 7, 1884, 23 Stat. L., 222; March 3, 1885, ibid., 510; August 4, 1886, 24 Stat. L., 251; October 2, 1888, 25 Stat. L., 540; March 2, 1889, ibid., 971; August 30, 1890, 26 Stat. L., 402; March 3, 1891, ibid., 979; August 5, 1892, 27 Stat. L., 379; March 3, 1893, ibid., 601; August 18, 1894, 28 Stat. L., 406; March 2, 1895, ibid., 951, June 11, 1896, 29 Stat. L., 444; March 2, 1897, ibid.. 617; March 15, 1898, 30 Stat. L., 327; May 26, 1900, 31 ibid, 209; and March 2, 1901, ibid., 895.

money as he may deem just, reasonable, and necessary for expenditure upon the repair and operation of such roads, pavements, streets, lights, sewerage, and general police, as, in the opinion of the Secretary of War, should be constructed and maintained in order to protect the interests of the United States and the interests, health, and general welfare of the said nonmilitary interests now established or that may hereafter be established at Fort Monroe:[1] *Provided further*, That all funds collected as above provided, or that may be received from other incidental sources from and after this date, be, and are hereby, made special contingent funds, to be collected and expended for the above purposes in accordance with rules and regulations to be prescribed by the Secretary of War, who will render annually to Congress a detailed account of all receipts and expenditures.[2] *Act of August 1, 1894 (28 Stat. L., 212).*

Use of receipts.

THE UNITED STATES INFANTRY AND CAVALRY SCHOOL[3] AT FORT LEAVENWORTH, KANS.

Designation and purpose. May 26, 1900, v. 31, p. 205.

1518. To provide means for the theoretical and practical instruction at * * * the Infantry and Cavalry School at Fort Leavenworth, Kansas; * * * by the purchase of text-books, books of reference, scientific and professional papers, and for all other absolutely necessary expenses, to be allotted in such proportions as may, in the opinion of the Secretary of War, be for the best interest of the military service, eight thousand dollars. *Act of May 26, 1900 (31 Stat. L., 205).*

---

[1] The act of August 1, 1894 (28 Stat. L., 212), had contained the requirement that "the owners of hotels and other nonmilitary buildings now at Fort Monroe, Virginia, shall bear one-half of the expense of constructing said sewer," and the Secretary of War was authorized to "equitably and justly apportion among, assess against, and collect from the said owners and expend in construction of said sewer the moiety of the estimated cost thereof."

[2] Regulations for the apportionment and collection of assessments under this statute have been prepared and promulgated by the Secretary of War. Under the provision in the act of June 11, 1896 (29 Stat.L., 414), making an appropriation for a post-office building at Fortress Monroe, "that the building shall be erected upon plans, specifications, etc., to be approved by the Secretary of War," the building was placed, for the purpose of erection, under the control of the War Department, but upon the completion of the building it will pass by operation of law into the custody of the Treasury Department. (IV Compt. Dec., 521.)

[3] The Infantry and Cavalry School was established at Fort Leavenworth, Kans., in pursuance of General Orders, No. 42, Adjutant-General's Office, of May 7, 1881. Although not created by statute, its existence has been recognized by Congress in several acts of appropriation. See acts of March 2, 1889, 25 Stat. L., 966; August 30, 1890, 26 Stat. L., 462; March 3, 1891, ibid., 979; August 5, 1892, 27 Stat. L., 379; March 3, 1893, ibid., 601; August 18, 1894, 28 Stat. L., 400; March 2, 1895, ibid., 951; and June 11, 1896, 29 Stat. L., 444; and subsequent acts of appropriation, including those of May 26, 1900, 31 Stat. L., 205, and March 2, 1901, ibid, 895.

THE CAVALRY AND LIGHT ARTILLERY SCHOOL[1] AT FORT RILEY, KANS.

School of Cavalry and Light Artillery Instruction established at Fort Riley, Kans.

Jan. 29, 1887, v. 24, p. 372.

1519. That the Secretary of War be, and he is hereby, authorized and directed to establish upon the military reservation at Fort Riley, a permanent school of instruction for drill and practice for the cavalry and light artillery service of the Army of the United States, and which shall be the depot to which all recruits for such service shall be sent; and for the purpose of construction of such quarters, barracks, and stables as may be required to carry into effect the purposes of this act the sum of two hundred thousand dollars, or so much thereof as may be necessary, is hereby appropriated out of any money in the Treasury not otherwise appropriated. *Act of January 29, 1887 (24 Stat. L., 372).*

---

[1] The Cavalry and Light Artillery School was established in pursuance of the act of January 29, 1887, by General Orders, No. 17, Adjutant-General's Office of March 14, 1882. See also in connection with this school the acts of October 2, 1888, 25 Stat. L., 534, and March 2, 1889, ibid., 966; and subsequent acts of appropriation, including those of May 26, 1900, 31 Stat. L., 205, and March 2, 1901, ibid, 896.

CHAPTER XXXII.

CONTRACTS AND PURCHASES.[1]

Par.
1520–1528. General provisions respecting contracts and purchases.
1529–1533. Advertising.
1534–1538. Bids and proposals.
1539–1541. Preparation and execution of contracts.
1542–1556. Miscellaneous requirements.
1557. Assignments.
1558–1566. Penal offenses in connection with contracts and purchases.
Par.
1567–1570. The Returns Office.
1571. Copy of contract to Auditor for War Department.
1572–1575. The Eight-Hour law.
1576, 1577. Bonds to secure payment for labor and materials.
1578–1580. Inspection of fuel in the District of Columbia.

GENERAL PROVISIONS.

1520. Contracts to be made under direction of the Secretary of War.
1521. Unauthorized contracts prohibited.
1522. Erection and repair of public buildings.
1523. Purchases of land.
1524. The same, building sites.
1525. Acceptance of volunteer service.
1526. Contracts, how made.
1527. The same, advertisements.
1528. The same, restriction.

Contracts for the military service to be made under direction of Secretary of War.
July 16, 1798, c. 85, s. 3, v. 1, p. 610; Feb. 27, 1877, c. 69, v. 19, p. 249.
Sec. 3714, R.S.

1520. All purchases and contracts for supplies or services for the military and naval service shall be made by or under the direction of the chief officers of the Departments of War and of the Navy, respectively.[2] And all agents or contractors for supplies or service as aforesaid shall render their accounts for settlement to the accountant of the proper department for which such supplies or services are required, subject, nevertheless, to the inspection and revision of the officers of the Treasury in the manner before prescribed.[1]

---

[1] The United States in its political capacity may, within the sphere of the constitutional powers confided to it, and through the instrumentality of the departments to which those powers are intrusted, enter into contracts not prohibited by law and appropriate to the just exercise of these powers; no legislative authorization is required, such power being incident to the general right of sovereignty. Dugan *v.* U. S., 3 Wheaton, 172; U. S. *v.* Tingey, 5 Peters, 114; U. S. *v.* Bradley, 10 ibid., 343; U. S. *v.* Linn, 15 ibid., 290; Cotton *v.* U. S., 11 Howard, 229; Fowler *v.* U. S., 3 Ct. Cls., 43; Allen *v.* U. S., ibid., 91.

[2] Under this statute the Secretary of War is the source of all authority to make contracts or purchases in all branches of the military establishment. "Whether he makes the contracts himself, or confers the authority upon others, it is his duty to see that they are properly and faithfully executed; and if he becomes satisfied that contracts which he has made himself are being fraudulently executed, or those made by others were made in disregard of the rights of the Government, or with the intent to defraud it, or are being unfaithfully executed, it is his duty to interpose, arrest

Unauthorized contracts prohibited. Mar. 2, 1861, c. 84, s. 10, v. 12, p. 220. Sec. 3732, R.S.

1521. No contract or purchase on behalf of the United States shall be made, unless the same is authorized by law or is under an appropriation adequate to its fulfillment, except in the War and Navy Departments, for clothing, subsistence, forage, fuel, quarters, or transportation, which, however, shall not exceed the necessities of the current year.[2]

---

the execution, and adopt effectual measures to protect the Government against the dishonesty of subordinates." U. S. *v.* Adams, 7 Wall., 463, 477; Parish *v.* U. S., 8 Wall., 489.

The head of an Executive Department may, when not prejudicial to the interests of the Government, or for its benefit, alter or modify the terms of a contract made under his direction, but his subordinates may not take such action without express authority from him. 2 Compt. Dec., 182.

The laws governing the purchase of supplies for the Army are equally applicable whether the purchases are made from funds received from the sale of stores or from the regular appropriations available therefor. 3 Dig. 2 Compt. Dec., 287.

It is only an express contract which (in the absence of special authority from Congress) can legally be entered into by the Secretary of War, or a military officer, or can be recognized and acted upon as binding upon the United States. Claims against the United States arising upon alleged implied contract can not be entertained, but the claimants must be referred to the Court of Claims or Congress. Further, the contract, to be legally made or recognized as legal, must be in writing (*a*) (except only—according to the ruling in Cobb's Case (*b*) when entered into without previous advertisement by reason of the existence of a "public exigency;" see *infra*). So, in a case where the only evidence of an alleged contract of lease consisted of vouchers, setting forth accounts for rent claimed, approved by an assistant quartermaster, *held*, that there was no sufficient evidence of an express or written contract upon which payment could be authorized by the Secretary of War. (*c*) Dig. Opin. J. A. Gen., 275, par. 1.

The Secretary of War has authority to extend the time for the execution of a contract made on behalf of his Department when the interests of the Government are not thereby prejudiced, and particularly when its noncompletion within the time limited is not due to the negligence of the contractor. 2 Compt. Dec., 242; Solomon *v.* U. S., 19 Wall., 17; U. S. *v.* Corliss Steam Engine Co., 91 U. S., 321; XVIII Opin. Att. Gen., 101; 2 Compt. Dec., 635.

Approval of contract by superior authority.—Where a contract in terms "is subject to the approval of the Quartermaster-General," approval is a condition precedent to the legal effect of the agreement. Darragh *v.* U. S., 33 Ct. Cls., 377; Monroe & Richardson *v.* U. S., 35 ibid., 199. The refusal of the Quartermaster-General to approve a contract after work has been begun by the contractor is not a rescission. The contractor who begins work before approval does so at his own risk; and if he is paid for the work done, he can not recover profits as if there had been a breach. Ibid. Such approval need not be in writing. Speed's Case, 8 Wallace, 77. Though the failure of the Quartermaster-General to act within a reasonable time might validate a contract made subject to his approval, he is nevertheless entitled to time for inquiry and investigation and the discharge of the ordinary business of his department. Darragh *v.* U. S., 33 Ct. Cls., 377.

[1] For statutes in respect to accounting, see the title "*The Accounting Officers,*" in the chapter entitled THE DEPARTMENT OF THE TREASURY.

[2] The United States when it enters into a contract with an individual relinquishes its sovereign character *quoad* that transaction, is subject to the rules of right and justice between man and man, and is controlled by the same laws that govern individuals with respect to such contract. Clark *v.* U. S., 6 Wallace, 546; U. S. *v.* Smoot,

---

[a] See Henderson *v.* U. S., 4 Ct. Cls., 75; XIV Opin. Att. Gen., 229; Clark *v.* U. S., 95 U. S., 539.
[b] Cobb *v.* U. S., 7 Ct. Cls., 470, and 9 ibid., 291. And see Thompson *v.* U. S., ibid., 198.
[c] See XIV Opin. Att. Gen., 230.

Erection of buildings, etc. July 25, 1868, c. 233, s. 3, v. 15, p. 177. Sec. 3733, R.S.

1522. No contract shall be entered into for the erection, repair, or furnishing of any public building, or for any public improvement whih shall bind the Government to pay a larger sum of money than the amount in the Treasury appropriated for the specific purpose.[1]

Purchases of land. May 1, 1820, c. 52, s. 7, v. 3. p. 568. Sec. 3736, R.S.

1523. No land shall be purchased on account of the United States, except under a law authorizing such purchase.[2]

Sites for buildings. Mar. 3, 1875, v. 18, p. 371.

1524. No money shall be paid nor contracts made for payment for any site for a public building in excess of the amount specifically appropriated therefor.[3] *Act of March 3, 1875 (18 Stat. L., 371).*

---

15 ibid., 47; Cooke *v.* U. S., 91 U. S., 398; U. S. *v.* Bostwick, 94 U. S., 592; Mann *v.* U. S., 3 Ct. Cls., 404; Chic. R. R. Co. *v.* U. S., 104, U. S., 680; U. S. *v.* No. Am. Com. Co., 74 Fed. Rep., 145. The United States is liable in damages for breach of contract to the same extent as an individual. Chicago R. R. Co. *v.* U. S., 104 U. S., 680; Eastern R. R. Co. *v.* U. S., 129 U. S., 396. Such right of action against the United States, however, is subject to the limitation that the Government can not be be sued without its consent. U. S. *v.* McLemore, 4 Howard, 286; Hill *v.* Clarke, 8 Peters, 444; U. S. *v.* Clarke, 8 Peters; DeGroot *v.* U. S., 5 Wallace, 419; U. S. *v.* Eckford, 6 ibid., 484; U. S. *v.* Lee, 106 U. S., 204; Nock *v.* U. S., 2 Ct. Cls., 451. Such consent to be sued, in respect to certain causes of action, has been given by the establishment of the Court of Claims. For the jurisdiction of this court, see chapter VII, *ante.*

The restrictions of section 3732, Revised Statutes, are in the alternative, prohibiting a contract or purchase on the part of the United States unless "authorized by law" or unless such contract or purchase is made "under an appropriation adequate to its fulfillment." Contracts to be valid must be shown to come under one or the other of these provisions. Shipman *v.* U. S., 18 Ct. Cls., 138.

When the authority to enter into a contract for a parlicular work in behalf of the United States depends wholly upon an appropriation of money made for that purpose, no officer of the Government has power to create a liability therefor beyond the amount of the appropriation, and a contractor can not recover more than the money appropriated, whatever may be the extent of his work. When an alleged liability rests wholly upon the authority of an appropriation they must stand or fall together, so that when the latter is exhausted the former is at an end, to be revived, if at all, only by subsequent legislation by Congress. Shipman *v.* U. S., 18 Ct. Cls., 138, 147; McCullom *v.* U. S., 17 ibid., 92, 103; Trenton Co. *v.* U. S., 12 ibid., 147, 157.

If an officer is clothed with authority to do a piece of work without limitation as to cost, the contracts made by him therefor are binding upon the Government whether money is appropriated for the purpose or not. Shipman *v.* U. S., 18 ibid., 138; Collins *v.* U. S., 15 ibid., 22, 35; XIII Op. Att. Gen., 315; XV ibid., 236.

Acknowledgments and promises made by executive officers of the Government do not bind the United States when they are not made under express or implied authority of Congress. Leonard et al. *v.* U. S., 18 Ct. Cls., 382.

[1] Authority to contract for the completion of an entire structure, the plan of which has been determined on, can not be inferred from the mere fact that an appropriation of a certain sum, to be expended on the structure, has been made. Hence a contract, though it be good to the extent of such appropriation, could not affix itself to future appropriations and control their expenditure. A contract of this character would be in violation of the spirit of section 3, act of July 25, 1868, sec. 3733, R. S., if not of its express terms. XV Op. Att. Gen., 236.

Under section 5 of the act of June 20, 1874, 18 Stat. L., 111, all appropriations for "public buildings" are available until otherwise ordered by Congress. 3 Dig. 2 Comp. Dec., 29. A subappropriation for a public building must, under the act of June 20, 1874, 18 Stat. L., 110, 111, remain available until its object has been accomplished or until it has been exhausted, unless otherwise ordered by Congress. Ibid. See also 2 Comp. Dec., 365; 3 ibid., 487.

[2] The act of Congress does not prohibit the acquisition by the United States of the legal title to land, without express legislative authority, when it is taken by way of security for debt. Neilson *v.* Lagow, 12 How., 98.

[3] See, also, for additional restrictions the act of March 3, 1875 (18 Stat. L., 371).

1525. Hereafter no Department or officer of the United States shall accept voluntary service for the Government or employ personal service in excess of that authorized by law, except in cases of sudden emergency involving the loss of human life or the destruction of property.[1] *Act of May 1, 1884 (23 Stat. L., 17).*

Acceptance of voluntary service prohibited; exceptions.
May 1, 1884, v. 23, p. 17.

1526. All purchases and contracts for supplies[2] or services in any of the Departments of the Government, except for personal services, shall be made by advertising[3] a sufficient time previously for proposals respecting the same when the public exigencies do not require the immediate delivery of the articles or performance of the service. When immediate delivery or performance is required by the public exigency[3] the articles or service required may be procured by open purchase or contract at the places and in the manner in which such articles are usually bought and sold or such services engaged between individuals.[4]

Contracts and purchases, how made; advertising; public exigencies.
Mar. 2, 1861, c. 84, s. 10, v. 12, p. 220.
Supplies for Executive Departments.
Sec. 3709, R. S.

---

[1] Denison *v.* U. S., 168 U. S. 241.

[2] The word "supplies," as used in section 3709 of the Revised Statutes evidently has reference to those things which the well-known needs of the public service will from time to time require in its different branches for its successful and efficient administration, and the statute was intended to afford the Government the pecuniary benefits, as well as the protection against fraud and favoritism, which open and honest competition is always likely to secure. It could not have been in the mind of the lawmaking power to require that purchases could only be made after advertisement of small articles which may occasionally be needed, and where in many cases the cost of advertising itself would exceed the value of the article purchased. It can not be said that such cases are governed by the emergency provision in the statute, for there may be, and are, many instances where the officer could not truthfully certify that immediate delivery was necessary. 3 Dig. 2 Compt. Dec., 288.

[3] The act of March 2, 1861, sec. 3709, R. S., while requiring such advertisement as the general rule, invests the officer charged with the duty of procuring supplies or services with a discretion to dispense with advertising if the exigencies of the public service require immediate delivery or performance. It is too well settled to admit of dispute at this day that where there is a discretion of this kind conferred on an officer or board of officers, and a contract is made in which they have exercised that discretion, the validity of the contract can not be made to depend on the degree of wisdom or skill which may have accompanied its exercise. U. S. *v.* Speed, 8 Wall., 77, 83; Child v. U. S., 4 Ct. Cls., 176; Mason *v.* U. S., 4 Ct. Cls., 495; Wentworth *v.* U. S., 5 Ct. Cls., 302. See, also, III Compt. Dec., 175, 314, 470.

[4] Section 3709, Revised Statutes, provides, generally, that the making of public contracts for supplies, etc., shall be preceded by an advertising for proposals "when the public exigencies do not require the immediate delivery of the articles or performance of the service." Exigencies growing out of a state of war, or hostilities with Indians, were probably mainly had in view, and it is exigencies of this class which have been considered in the adjudged cases in the Supreme Court and Court of Claims. (*a*) It is clear, however, that other exigencies may exist requiring that contracts or purchases be made at once or without the delay incident to advertising for proposals. Thus a loss of stores, structures, etc., on hand, caused by an *actus Dei* or *vis major*, as fire, storm, freshet, or a sudden riot or violent disorder; or a loss of supplies occasioned by the neglect of military subordinates in charge; or a failure of a contractor to fulfill a contract for supplies, transportation, or other service, might properly be

---

[a] See U. S. *v.* Speed, 8 Wallace, 83; Reeside *v.* U. S., 2 Ct. Cls., 1; Mowry *v.* U. S., ibid., 68; Stevens *v.* U. S., ibid., 95; Floyd *v.* U. S., ibid., 429; Crowell *v.* U. S., ibid., 501; Baker *v.* U. S., 3 ibid., 343; Henderson *v.* U. S., 4 ibid., 75; Childs *v.* U. S., ibid., 176; Wentworth *v.* U. S., 5 ibid., 302; Wilcox *v.* U. S., ibid., 386; Cobb *v.* U. S., 7 ibid., 471, and 9 ibid., 291; Thompson *v.* U. S., ibid., 187; McKee *v.* U. S., 12 ibid., 505.

Advertisements for all the Departments to be on the same day.
Sec. 1, Jan. 27, 1894, v. 28, p. 33.
R. S. Sec. 3709.

1527. The advertisement for such proposals shall be made by all the Executive Departments, including the Department of Labor, the United States Fish Commission, the Interstate Commerce Commission, the Smithsonian Institution, the Government Printing Office, the government of the District of Columbia, and the superintendent of the State, War, and Navy building, except for paper and materials for use of the Government Printing Office, and materials used in the work of the Bureau of Engraving and Printing, which shall continue to be advertised for and purchased as now provided by law, on the same days and shall each designate two o'clock post meridian of such days for the opening of all such proposals in each

Time for opening bids to be the same.

---

regarded as constituting an "exigency" under the statute, if of such magnitude or injurious consequence to the Army as to necessitate an immediate making good of the deficiency. (*a*) The general rule, however, of the statute in requiring a notice and invitation to the public as a preliminary to the awarding of a contract, is founded upon a sound and well-considered public policy, and exceptions thereto, especially in time of peace, should be recognized as admissible only where, if the rule were strictly complied with, the public interests would manifestly be most seriously prejudiced. (*b*) Dig. Opin. J. A. G., 279, par. 9.

An exigency can not be created by the simple certificate of a public officer that it exists. An exigency involves a state of pressing necessity so great that the public interests would be prejudiced if the contemplated purchase was not made. A certificate made after the purchase of the articles is of no effect. 3 Dig. Compt. Dec., 286. The term "public exigency" refers to an exceptional and urgent necessity requiring the immediate performance of the work or service. Ibid., 328.

Proof of the existence of an exigency must be presented in order to authorize the accounting officers to pass a voucher for an exigency purchase under section 3709 of the Revised Statutes. Such proof must accompany the voucher in the form of a certificate by the officer who made the purchase that a public exigency required the immediate delivery of the articles purchased, and that they were, therefore, purchased in open market. In other words, there must be proof that the proper officer has actually determined that an exigency existed. The certificate may be made in the following form: "The exigencies of the public service required the immediate delivery of the articles specified in the voucher, and they were, therefore, obtained by purchase in open market, without advertisement, and at the lowest market rates." Ibid.

Except in the case of an existing public exigency a contract for supplies in the War Department or military branch of the service is to be preceded by an advertisement for proposals as directed in section 3709, Revised Statutes. This advertisement is not a mere facility for the convenience of an executive Department, which may be waived at discretion, but an essential proceeding prescribed by the statute as a condition to the exercise of the authority to enter into a contract for the United States. Thus enjoined, no omission or evasion of this prerequisite, however convenient such

---

[a] See G. O. 10 of 1879, secs. 22–25, pp. 14–15; do. 72, ibid., p. 52; do. 40 of 1880, p. 58; also McKee *v.* U. S., 12 Ct. Cls., 529–530.

[b] As to the authority who is to decide whether there exists such an exigency as is contemplated by the statute, the Supreme Court, in the United States *v.* Speed, 8 Wallace, 83, has held that it is "the officer charged with the duty of procuring supplies or services who is invested with this discretion." This description is rather general, nor is the term "the purchasing officer," by which the Court of Claims explains it, in Thompson *v.* U. S., 9 Ct. Cls., 196, a much more precise definition. It is clear, however, that a subordinate officer charged with the duty of being the immediate representative of the United States in a contract or purchase should not, in general, venture to dispense with advertising, on the theory of the existence of a public exigency, in the absence of instructions or orders from a proper superior. Nor, on the other hand, will a superior officer, in entering into a contract for his command or branch of the service, properly assume that an "exigency" exists authorizing him to dispense with the statutory forms when the period is time of peace and no imperative necessity exists for the immediate delivery of the supplies or performance of the service proposed to be contracted for. It is to be noted that the cases both of Speed and Thompson related to contracts entered into during the civil war. In the instructive opinions of the Attorney-General on the "Fifteen per cent contracts" of April 27 and May 3, 1877, XV Opin., 235, 253, it is held that the "exigency" contemplated by the statute can be one of time only, and that it can be regarded as existing only where an immediate delivery or performance is required by a public necessity. Dig. Opin. J. A. G., par. 853, note 1.

Department and other Government establishment in the city of Washington; and the Secretary of the Treasury shall designate the day or days in each year for the opening of such proposals and give due notice thereof to the other Departments and Government establishments. Such proposals shall be opened in the usual way and schedules thereof duly prepared and, together with the statement of the proposed action of each Department and Government establishment thereon, shall be submitted to a board consisting of one of the Assistant Secretaries of the Treasury and Interior Departments and one of the Assistant Postmasters-General, who shall be designated by the heads of said Departments and the Postmaster-General,

Submission to board for approval.

---

an omission or evasion may be, can legally be allowed. (*a*) So, *held*, that it was no excuse for a noncompliance with the statute by a quartermaster that his contracts (made without advertisement) had been made with the most reliable parties and to the advantage of the United States. And, *held*, that the requirement as to advertising for proposals must be complied with in contracting for a supply of articles purchased for trial, equally as if the contract were for the regular yearly supplies. Dig. Opin. J. A. G., par. 849.

The main object of the advertisement is to induce a free and open competition for the contracts of the Government, and thus to protect the United States from fraudulent combinations and collusive preferences in its business transactions. (*b*) At the same time the advertisement, in inviting proposals from the public, is properly to be viewed as a pledge on the part of the United States that the contract will, as a general rule, be awarded to the lowest bidder, provided he is a responsible person and his bid is a reasonable one, and provided, of course, he complies with the existing regulations as to bond, etc. Ibid., par. 855. See, also, 1 Compt. Dec., 363.

A military emergency can not be measured by precise rules. Thompson *v.* U. S., 9 Ct. Cls., 187. The act of March 2, 1861 (sec. 3709, R. S.), requires of a quartermaster that openness, diligence, prudence, and care which an individual might be supposed to exercise were he buying goods in just such an emergency and under just such circumstances. * * * A statute relating to national emergencies must necessarily be construed liberally, but a case under it can form no precedent for other cases. What was right for a quartermaster to do under certain circumstances can be lawful and right only when the precise cirsumstances are repeated. Childs & Co. *v.* U. S., 4 Ct. Cls., 176.

An officer charged with the duty of making a contract or purchase is responsible under the laws and regulations for his action. Permission or orders to make a contract or purchase without inviting competition will not justify that procedure and will not be given. Par. 597, A. R., 1901.

In the absence of any emergency in fact, or any declared by the head of the Department in which a public work is being carried on, or any emergency that can be judicially inferred, the requirements of this section, in respect to advertisement, are mandatory, and a contract made in violation of it is void. Schneider *v.* U. S., 19 Ct. Cls., 547, 551.

Personal services are such as the individual employed or contracted with must per-

---

[a] See VI Opin. Att. Gen., 406; 10 ibid., 28; also opinion of the Solicitor-General of March 20, 1876, XV Opin., 539, wherein, in holding contracts made without advertising to be not binding on the United States, he dissents from the opinion of Attorney-General Bates, in X Opin., 416, to the effect that while an absence of the prescribed advertisement will render illegal and inoperative an unexecuted contract, the Government can not, on account of such omission, rescind, to the damage of a contractor, a contract entered into by him in good faith and partly performed. In a later opinion of April 27, 1877, XV Opin., 236, the Attorney-General refers to the question, whether the provision of section 3709, Revised Statutes, requiring that contracts in general shall be preceded by advertisement, is mandatory or only directory, as one which has been much discussed (see, for example, the reference to this question in Fowler *v.* U. S., 3 Ct. Cls., 47), but is not required to be decided in that opinion. But whatever may be the true construction of this section, it is clear that no officer of the Army, in the absence of express authority to do so from the Secretary of War, can be justified in omitting to comply with the provision in regard to advertising.

[b] See Harvey *v.* U. S., 8 Ct. Cls., 506. In regard to a statute (similar to section 3709), governing the Post-Office Department, the Supreme Court, in Garfield *v.* U. S., 3 Otto, 246, say: "The object of the statute was to secure notice, * * * that bidders might compete, that favoritism should be prevented, that efficiency and economy in the service should be obtained."

respectively, at a meeting to be called by the official of the Treasury Department, who shall be chairman thereof, and said board shall carefully examine and compare all the proposals so submitted and recommend the acceptance or rejection of any or all of said proposals.[1] And if any or all of such proposals shall be rejected advertisements for proposals shall again be invited and proceeded with in the same manner. *Sec. 1, act of January 27, 1894 (28 Stat. L., 33).*

Readvertisement of rejected bids.
Jan. 27, 1894, s. 1, v. 28, p. 33.

The same. Restriction.
April 21, 1894, v. 28, p. 62.
Provisions limited.
Sec. 3709, R. S.
Contracts, etc., not invalid.

1528. The act entitled "An act to amend section thirty-seven hundred and nine of the Revised Statutes relating to contracts for supplies in the Departments at Washington," approved January twenty-seven, eighteen hundred and ninety-four, be, and the same is hereby, so amended that the provisions thereof shall apply only to advertisements for proposals for fuel, ice, stationery, and other miscellaneous supplies to be purchased at Washington for the use of the Executive Departments and other Government establishments therein named; and no advertisements made or contracts awarded or to be awarded thereon since January twenty-seven, eighteen hundred and ninety-four, in accordance with the laws in force prior to said date,

---

form, in person, directly under the control and supervision of an officer or agent of the Government, as distinguished from services the performance of which may be delegated by the contractor to others. Par. 596, A. R., 1901. They are contracts for expert or skilled service to be performed by the contractor in person. Dig. Opin. J. A. G., 231, par. 11.

Where the essential part of a contract is for personal services, advertising for proposals under section 3709, Revised Statutes, is not required. 2 Compt. Dec., 185.

Section 3709 does not require the advertising for proposals, nor the entering into contracts for the purchase of patented or copyrighted articles where the benefit of competition can not be secured. 2 Compt. Dec., 632. For provisions of regulations respecting purchases, etc., see paragraphs 593–597, Army Regulations of 1901.

METHODS OF PURCHASE.

A purchase of supplies or engagement of services will be made:

1. By contract, "reduced to writing and signed by the contracting parties with their names at the end thereof." Agreements of this character only are termed "contracts" in these regulations.
2. By written proposal and written acceptance.
3. By oral agreement.

When delivery or performance does not immediately follow an award or bargain the first method will be used; when delivery or performance immediately follows an award or bargain the second method may be resorted to. Par. 627, A. R., 1901.

Contracts will be made on forms furnished by the chiefs of bureaus, in cases where such forms are applicable, and those forms will be modified only to such extent as is necessary. All conditions will be stated therein as fully and clearly as possible. Par. 628, ibid.

If a contract made by a subordinate is, in terms, subject to the approval of his superior, approval is a condition precedent to the validity of the agreement. Monroe and Richardson *v.* U. S., 35 Ct. Cls., 199; Darragh *v.* U. S., 33 ibid., 377.

Where a contract provides that it is subject to the approval of a designated officer, such approval need not be in writing. Monroe and Richardson *v.* U. S., 35 Ct. Cls., 199; Speed's Case, 8 Wallace, 77.

[1] For a restriction upon the operation of this paragraph see the act of April 21, 1894 (28 Stat. L., 62). Par. 1528, *post.*

shall be declared to be illegal or invalid for noncompliance with said law of January twenty-seventh, eighteen hundred and ninety-four. *Act of April 21, 1894 (28 Stat. L., 62).*

ADVERTISING.

Par.
1529. No advertisement without authority.
1530. Rates.
1531. Advertising in District of Columbia; restriction.
1532. The same.
1533. Advertisements on Pacific coast.

No advertising without authority.
July 15, 1870, c. 292, s. 2, v. 16, p. 308.
Sec. 3828, R.S.

1529. No advertisement, notice, or proposal for any Executive Department of the Government, or for any Bureau thereof, or for any office therewith connected, shall be published in any newspaper whatever, except in pursuance of a written authority for such publication from the head of such Department; and no bill for any such advertising, or publication, shall be paid, unless there be presented, with such bill, a copy of such written authority.[1]

---

[1] The requirements of section 3828, Revised Statutes, are complied with by the issue of a general circular of instructions, and it is not necessary to file authority with each particular bill. Compt. Dec., 1893–94, 103; U. S. *v.* Odeneal, 10 Fed. Rep., 616.

By the terms of section 3709, Revised Statutes, and the acts of July 5, 1884 (23 Stat. L., 109), and February 12, 1895 (28 Stat. L., 654), advertising is required prior to purchase in the case of "all supplies for the use of the various departments and posts of the Army and all branches of the Army service," including the procurement of steel for gun construction. Advertising may be dispensed with in the emergency contemplated in section 3709 of the Revised Statutes; in the purchase of certain ordnance stores, when the aggregate of said purchase does not exceed $200 (act of July 16, 1892, 27 Stat. L., 174), and in the purchase of medicines and medical supplies (act of February 27, 1893, 27 Stat. L., 478). See also notes to paragraph 1151, *ante.*

A disbursing officer is not authorized to pay bills for newspaper advertising when he is satisfied that the price exceeds the commercial rates charged to private individuals, with the usual discounts, notwithstanding the affidavit of the proprietor of the newspaper to the contrary. 1 Compt. Dec., 312.

When the proprietors of a newspaper show by affidavit that the rates theretofore sworn to by them were, although not so limited, intended simply to cover advertising of a certain kind, they may be paid at their usual commercial rates for advertising not of the kind intended by their first statement of rates. Ibid., 373.

When advertising in connection with the purchase of subsistence supplies for the Army is, by law, a necessary condition precedent to the purchase of such supplies, and there is no specific appropriation for such advertising, the cost thereof is properly chargeable to the appropriation "Subsistence of the Army." 3 Dig. Comp. Dec., 23.

Under section 3709 of the Revised Statutes and paragraph 1486 of the Army Regulations (1881), the length of time for the publication of advertisements inviting proposals for furnishing Army supplies was left somewhat to the discretion of the purchasing officer. But the act of July 5, 1884 (23 Stat. L., 109), has fixed, in all cases excepting emergency purchases, the minimum period during which public notice shall be given, authorizing the purchase of "small amounts for immediate use" after public notice of not less than ten days, while all other purchases are required to be made after public notice of not less than thirty days. Ibid., 23.

Under the Army Regulations, advertisement may be made by handbills; but when this method is resorted to it must be shown that the handbills were circulated to such an extent as to render it probable that a large number of persons engaged in the business of furnishing the articles desired had thus been afforded an opportunity to compete for the contract which was to be let. Ibid., 24. See also 3 Comp. Dec., 730.

Rates of advertising.
June 20, 1878, v. 20, p. 216.

1530. Hereafter all advertisements, notices, proposals for contracts, and all forms of advertising required by law for the several Departments of the Government may be paid for at a price not to exceed the commercial rates charged to private individuals, with the usual discounts; such rates to be ascertained from sworn statements to be furnished by the proprietors or publishers of the newspapers proposing so to advertise: *Provided*, That all advertising in newspapers since the tenth day of April, eighteen hundred and seventy-seven, shall be audited and paid at like rates; but the heads of the several Departments may secure lower terms at special rates whenever the public interest requires it. *Act of June 20, 1878 (20 Stat. L., 216).*

Proclamations, etc., advertisements in District of Columbia; limitation.
July 31, 1876, v. 19, p. 105.

1531. All executive proclamations, and all treaties required by law to be published, shall be published in only one newspaper, the same to be printed and published in the District of Columbia and to be designated by the Secretary of State and in no case of advertisement for contracts for the public service shall the same be published in any newspaper published and printed in the District of Columbia unless the supplies or labor covered by such advertisement are to be furnished or performed in said District of Columbia. *Act of July 31, 1876 (19 Stat. L., 105).*

The same.
Jan. 21, 1881, v. 21, p. 317.
Sec. 3828, R.S.

1532. All advertising required by existing laws to be done in the District of Columbia by any of the departments of the Government shall be given to one daily and one weekly newspaper of each of the two principal political parties and to one daily and one weekly neutral newspaper: *Provided*, That the rates of compensation for such service shall in no case exceed the regular commercial rate of the newspapers selected; nor shall any advertisement be paid for unless published in accordance with section thirty-eight hundred and twenty-eight of the Revised Statutes.[1] *Act of January 21, 1881 (21 Stat. L., 317).*

Advertisements for supplies for Quartermaster's Department.
July 13, 1866, c. 176, s. 4, v. 14, p. 92.
Sec. 3716, R.S.

1533. The Quartermaster's Department of the Army, in obtaining supplies for the military service, shall state in all advertisements for bids for contracts that a preference shall be given to articles of domestic production and manufacture, conditions of price and quality being equal, and that such preference shall be given to articles of American production and manufacture produced on the Pacific coast, to the extent of the consumption required by the public service there. In advertising for Army supplies the Quartermaster's Department shall require all articles which are to be used in the States and Territories of the Pacific coast to be delivered and inspected at points designated in those States and Territories; and the advertisements for such supplies shall be published in newspapers of the cities of San Francisco, in California, and Portland, in Oregon.

---

[1] The subject of advertising in the War Department and its several bureaus and offices, and in the military establishment generally, is regulated by the provisions of paragraphs 598–602, Army Regulations of 1901. See notes to paragraph 1526, *ante*.

PROPOSALS—BIDDERS' BONDS.

Par.
1534. Secretary of War to prescribe regulations.
1535. Bidders' bonds.
1536. Opening bids.
1537. Separate proposals and contracts.
1538. The same exception; river and harbor works.

1534. The Secretary of War is hereby authorized to prescribe rules and regulations to be observed in the preparation and submission and opening of bids for contracts under the War Department.[1] *Act of April 10, 1878 (20 Stat. L., 36).*

Secretary of War to prescribe rules, etc.; bonds. Apr. 10, 1878, v. 20, p. 36.

1535. He may require every bid to be accompanied by a written guaranty, signed by one or more responsible persons, to the effect that he or they undertake that the bidder, if his bid is accepted, will, at such time as may be prescribed by the Secretary of War or the officer authorized to make a contract in the premises, give bond, with good and sufficient sureties, to furnish the supplies proposed or to perform the service required. If after the acceptance of a bid and a notification thereof to the bidder he fails within the time prescribed by the Secretary of War or other duly authorized officer to enter into a contract and furnish a bond with good and sufficient security for the proper fulfillment of its terms, the Secretary or other authorized officer shall proceed to contract with some other person to furnish the supplies or perform the service required, and shall forthwith cause the difference between the amount specified by the bidder in default in the proposal and the amount for which he may have contracted with another party to furnish the supplies or perform the service for the whole period of the proposal to be charged up against the bidder and his guarantor or guarantors, and the sum may be immediately recovered by the United States for the use of the War Department

Bidders' bonds. Mar. 3, 1883, v. 22, p. 488.

Bidders.

---

[1] For regulations prepared by the Secretary of War under the authority conferred by this statute, see paragraphs 598–626, Army Regulations of 1901.

in an action of debt against either or all of such persons.[1] *Act of March 3, 1883 (22 Stat. L., 488).*

Opening bids; notification. Jan. 31, 1868, Res. 8, v. 15, p. 246. Sec. 3710, R. S.

1536. Whenever proposals for supplies have been solicited, the parties responding to such solicitation shall be duly notified of the time and place of opening the bids, and be permitted to be present either in person or by attorney, and a record of each bid shall then and there be made.

Separate proposals and contracts. Sec. 3717, R. S.

1537. Whenever the Secretary of War invites proposals for any works, or for any material or labor for works, there shall be separate proposals and separate contracts for each work, and also for each class of material or labor for each work.

Two or more river and harbor works in one contract, etc. R. S., sec. 3717, modified, v. 25, p. 423. Sec. 2, Sept. 19, 1890, v. 26, p. 452.

1538. Nothing contained in section thirty-seven hundred and seventeen of the Revised Statutes of the United States, nor in section three of the river and harbor act of August eleventh, eighteen hundred and eighty-eight, shall be so construed as to prohibit or prevent the cumulation of two or more works of river and harbor improvement in the same proposal and contract where such works are situated in the same region and of the same kind or character. *Sec. 2, act of September 19, 1890 (26 Stat. L., 452).*

PREPARATION AND EXECUTION OF CONTRACTS.

Par.
1539. Contracts to be in writing.
1540. No member of Congress to be interested.
1541. Copies to be filed with Auditor for War Department.

The returns office; contracts to be in writing. June 2, 1862, c. 93, s. 1, v. 12, p. 411. Sec. 3744, R. S.

1539. It shall be the duty of the Secretary of War, of the Secretary of the Navy, and of the Secretary of the Interior, to cause and require every contract made by them severally on behalf of the Government, or by their officers under them appointed to make such contracts, to be reduced to writing, and signed by the contracting parties with their names at the end thereof;[2] a copy of which shall be filed by the officer making and signing the contract in the Returns Office of the Department of the Interior, as soon after the contract is made as possible, and within thirty days, together with all bids, offers, and proposals to him made by persons to obtain the same, and with a copy of any advertisement he may have published inviting bids, offers, or proposals for the same. All the copies and papers in relation to each contract shall be attached together by a ribbon and seal, and marked by numbers in regular order, according to the number of papers composing the whole return.[1]

---

[1] For requirements of regulations in respect to guaranties in support of bids and proposals, see paragraphs 611–613, Army Regulations of 1901.

[2] For instructions respecting the preparation and execution of contracts, see paragraphs 627–637, Army Regulations of 1901.

Stipulation that no member of Congress has an interest.

Apr. 21, 1808, c. 48, s. 3, v. 2, p. 484; Feb. 27, 1877, c. 69, v. 19, p. 249.

Sec. 3741, R. S.

1540. In every such contract or agreement to be made or entered into, or accepted by or on behalf of the United States, there shall be inserted an express condition that no member of [or Delegate to] Congress shall be admitted to any share or part of such contract or agreement, or to any benefit to arise thereupon.[2]

Contracts to be filed with auditors.

July 31, 1894, s. 18, v. 28, p. 210.

Sec. 3743, R. S.

1541. All contracts to be made, by virtue of any law, and requiring the advance of money, or in any manner connected with the settlement of public accounts, shall be deposited promptly in the offices of the Auditors of the Treasury, according to the nature of the contracts: *Provided*, That this section shall not apply to the existing laws in regard to the contingent funds of Congress.[3] *Act of July 31, 1894* (*28 Stat. L., 210*).

---

[1] It may be considered as settled that so much of section 3744 as provides that all contracts shall "be reduced to writing and signed by the contracting parties with their names at the end thereof" is mandatory, and contracts which do not comply with its requirements are void. In looking at the scope and purpose of this law and at the words in which it is couched, I can not doubt of the intention of Congress in its enactment. To my mind it is clear that it was designed to require every executory contract, at least, to be put in writing, so that its terms might not be mistaken and that the character and extent of the outstanding engagements of the United States might at all times be known to the executive and legislative departments, or be capable of being ascertained in a reasonable time and with appropriate exactitude. Henderson *v.* U. S., 4 Ct. Cls., 75, 83. There is no class of cases in which a statute for preventing frauds and perjuries is more needed than in this. And we think that the statute in question was intended to operate as such. It makes it unlawful for contracting officers to make contracts in any other way than by writing signed by the parties. This is equivalent to prohibiting any other mode of making contracts. Clark *v.* U. S., 95 U. S., 539, 542; South Boston Iron Co., 18 Ct. Cls., 165, 176; U. S. *v.* Lamont, 2 D. C. App., 532. The provisions of this section apply to contracts made in emergencies. Cobb et al. *v.* U. S., 18 Ct. Cls., 514, 532; Clark *v.* U. S., 95 U. S., 539. Offers and acceptances by letter are preliminary memoranda only and do not constitute a valid contract within the meaning of the statute. South Boston Iron Co. *v.* U. S., 118 U. S., 37, 42. Where, however, a parol contract has been wholly or partly executed on one side, the party performing will be entitled to recover the fair value of his property or services as upon an implied contract for a *quantum meruit.* Clark *v.* U. S., 95 U. S., 539. See also Warren & Goss *v.* U. S., 23 Ct. Cls., 77; South Boston Iron Co. *v.* U. S., 18 ibid., 165, and 118 U. S., 37; Clark *v.* U. S., 95 U. S., 543; The International Contracting Co. *v.* Lamont, 2 Ct. App. D. C., 532. See also Lindsley *v.* U. S., 4 Ct. Cls., 359; Burchiel *v.* U. S., 4 Ct. Cls., 549; Bernheimer *v.* U. S., 5 Ct. Cls., 65. The formal execution of contracts for Government work, as a prerequisite for their legality and binding effect, after the acceptance of proposals, as required by section 3744, Revised Statutes, was not dispensed with by the acts of March 23, 1883 (22 Stat. L., 488), and section 3 of the act of August 11, 1888 (25 Stat. L., 400, 423). U. S. *v.* Lamont, 2 D. C. App., 532.

[2] See paragraph 1558, *post.*

[3] All formal written contracts connected with the settlement of public accounts should be placed, and should remain, on file in the offices designated by law as their proper depositories. 3 Dig. 2d Compt. Dec., 112.

Under paragraph 633 of the Army Regulations of 1901 formal written contracts are to be executed in quintuplicate, one of which is to be filed, in accordance with section

MISCELLANEOUS REQUIREMENTS.

Par.
1542. American material preferred.
1543. Purchases, where made.
1544. Cavalry and artillery horses.
1545. The same, restriction on purchases.
1546. Draft animals, restriction.
1547. Means of transportation.
1548. Transportation of stores by contract.
1549. Expenditures on buildings, restriction.
Par.
1550. Post bakeries, schools, etc.
1551. Post gardens, exchanges.
1552. Contracts for subsistence.
1553. Purchases of steel.
1554. Purchases from Indians.
1555. Names of contractors to appear on articles purchased.
1556. Contracts for stationery, restriction.

American material preferred for public improvements.
Labor on same.
Sec. 2, Mar. 3, 1875, v. 18, p. 455.

1542. In all contracts for material for any public improvement the Secretary of War shall give preference to American material; and all labor thereon shall be performed within the jurisdiction of the United States. *Sec. 2, act of March 3, 1875 (18 Stat. L., 455).*

3743 of the Revised Statutes, with the proper Comptroller of the Treasury, because they are connected with the settlement of public accounts. Ibid., p. 111.

Under section 3743 of the Revised Statutes all contracts in any manner connected with the settlement of public accounts by the Second, Third, and Fourth Auditors and the Second Comptroller are to be deposited or filed in the Second Comptroller's Office within ninety days after their respective dates. This statutory requirement includes not only all formal written contracts or specialties in any manner connected with the settlement of accounts, but also all properly authorized extensions or other modifications of such contracts, every modification of a contract being in the nature of a new contract and connected with the settlement of accounts. Ibid., p. 112.

Only formal written contracts are required under section 3743 of the Revised Statutes to be filed in the office of the Second Comptroller. Informal contracts and the papers pertaining thereto should be filed with the accounts or vouchers to which they relate, in order to facilitate the examination and revision of accounts and vouchers. Ibid., 109.

A separate notification is required in each case of extension of a contract, so that it can be filed, with the contract to which it pertains, in the office of the Second Comptroller. Otherwise notifications of extensions of contracts will fail of the purpose contemplated in section 3743 of the Revised Statutes. Ibid., 112.

Formal written contracts made and filed in the proper office in pursuance of law must be regarded as necessary in the settlement of public accounts or claims, and therefore can not properly be returned either for cancellation or amendment. Ibid.

The Second Comptroller is not authorized to deliver to either of the parties to a contract, for any purpose whatever, any contract connected with the settlement of public accounts which has been properly placed in his custody under the provisions of section 3743 of the Revised Statutes. Ibid.

CONTRACTORS' BONDS.

Bonds for the faithful performance of contracts for supplies or service will be required in the following cases:

1. When the consideration is $3,000 or more, whatever may be the length of time required for the full performance of the contract.
2. When the consideration is over $250, but less than $3,000, and the contract can not be fully performed within thirty days from its date.

Bonds may be exacted or, in the discretion of the respective chiefs of bureaus concerned, waived in the following cases:

1. When the consideration is less than $3,000 and the contract is to be fully performed within thirty days from its date.
2. When the consideration is not more than $250, whatever may be the length of time required for full performance.
3. When the contract is for furnishing meals to recruits and recruiting parties.

The amount of penalty in a contractor's bond will be fixed by the contracting

1543. Hereafter, except in cases of emergency or where it is impracticable to secure competition, the purchase of all supplies for the use of the various departments and posts of the Army and of the branches of the army service shall only be made after advertisement, and shall be purchased where the same can be purchased the cheapest, quality and cost of transportation and the interests of the Government considered; but every open-market emergency purchase made in the manner common among business men which exceeds in amount two hundred dollars shall be reported for approval to the Secretary of War under such regulations as he may prescribe.[1] *Act of March 3, 1901 (31 Stat. L., 905).*

Purchases, where made.
Mar. 3, 1901, v. 31, p. 905.

---

officer, and will not be less than one-tenth nor more than the full amount of the consideration of the contract.

Nothing in this paragraph is to be construed as authorizing the waiving of bonds required under paragraph 644. Par. 638, A. R., 1901.

When bonds for the faithful performance of contracts are exacted, they will be made and executed with the necessary justification and certification of sufficiency of sureties, in accordance with the instructions printed on the blank forms of contractors' bonds furnished by the chief of bureaus. Such bonds must be executed by the contractor as principal, and by a surety company, or by at least two sufficient and responsible persons who must be citizens of the United States, as sureties. Each must affix his signature and seal, and each signature must be attested by at least one witness. When practicable there will be a separate witness to each signature. Par. 639. Ibid.

A company duly incorporated under the laws of the United States, or of any State, and legally authorized to guarantee bonds, may be accepted as surety, under the conditions prescribed in Article LVI. A firm, as such, will not be accepted as surety, nor a partner for a copartner or firm of which he is a member. Stockholders who are not officers of a corporation may be accepted as sureties for such corporation. Par. 640, ibid.

A guarantor, or the guarantors, to a bidder's guaranty may be accepted as surety, or sureties, to the bond of the same person as contractor, provided such guarantor or guarantors are able to justify as required for the bond. Par.641, ibid.

The sureties, if individuals, must jointly justify in double the amount of the penalty. The affidavit of justification must be taken before a person authorized by the laws of the United States, State, Territory, or District, to administer oaths. Justification will be followed by the certificate of a judge or clerk of a United States court, a United States district attorney, United States commissioner, a judge or clerk of a State court of record with the seal of said court attached, that the sureties are known to him, and that, to the best of his knowledge and belief, each is worth, over and above all debts and liabilities, the sum stated in his affidavit of justification. If found necessary, separate certificates may be furnished as to each surety. Par. 642, ibid.

Contractors' bonds will be executed in duplicate, one to accompany the copy of the contract which is sent to the Auditor for the War Department, and the other retained by the officer who makes the contract. Par. 643, ibid.

When a contract is entered into for the construction of any public building, or the prosecution and completion of any public work, or for repairs on any public building or public work, the contractor will be required, before entering upon performance of the same, to include in the bond given for the faithful performance of the contract the further obligation that he will promptly make payments to all persons who supply him with labor and materials for the prosecution of the work provided for in such contract. A certified copy of this contract and bond will be furnished to any person who has supplied such labor or materials, upon his application to the War Department, accompanied by an affidavit that the labor or materials have been supplied by him and have not been paid for by the contractor. Par. 644, ibid.

[1] This enactment replaces the acts of July 5, 1884 (23 Stat. L., 109), February 27, 1893 (27 ibid., 483), August 6, 1894 (28 ibid., 233), March 15, 1898 (30 ibid., 322),

Cavalry and artillery horses.
July 5, 1884, v. 23, p. 109.

1544. Hereafter all purchases of horses under appropriations for horses for the cavalry and artillery and for the Indian scouts shall be made by contract, after legal advertisement, by the Quartermaster's Department, under instructions of the Secretary of War, the horses to be inspected under the orders of the General Commanding the Army; and no horse shall be received and paid for until duly inspected.[1] *Act of July 5, 1884* (*23 Stat. L., 109*).

Limitation on purchases.
Feb. 12, 1895, v. 28, p. 660; Mar. 2, 1901, v. 31, p. 906.

1545. The number of horses purchased under this appropriation, added to the number on hand, shall be limited to the actual needs of the mounted service; and unless otherwise ordered by the Secretary of War no part of this appropriation shall be paid out for horses not purchased by contract, after competition duly invited by the Quartermaster's Department, and an inspection by such Department, all under the direction and authority of the Secretary of War.[2] *Act of March 2, 1901* (*31 Stat. L., 906*).

Draft animals; limit of purchases.
Feb. 9, 1887, v. 24, p. 398; Sept. 22, 1888, v. 25, p. 486.

1546. Hereafter no part of this appropriation shall be expended in the purchase for the Army of draft animals until the number on hand shall be reduced to five thousand, and thereafter shall only be expended for the purchase of a number sufficient to keep the supply up to five thousand. *Act of September 22, 1888* (*25 Stat. L., 486*).

---

and section 3729 of the Revised Statutes. For regulatious governing open-market purchases, see paragraphs 645–648, Army Regulations of 1901.

It has been held by the Attorney-General that "the object of this legislation is to secure for the Government the benefit of competition in obtaining supplies and to prevent favoritism in making the purchases thereof. It contemplates one general mode of purchase, namely, by contract, after advertisement, with 'the lowest responsible bidder for the best and most suitable article,' with but a single exception, and that is where an 'emergency' exists requiring the purchase to be otherwise made. Such emergency may arise not only before the required public notice can be given, but after it has once been given, in consequence of the failure to receive any bids or proposals; in either case the purchase thereupon would be an emergency purchase, and come within the requirement of the statute for an immediate report to the Secretary of War for his approval. This requirement is, I think, designed to extend to all purchases which are not made agreeably to the general mode above indicated, and hence it applies to the purchase of parts of machinery, or parts of stoves or ranges, for repairs, or of patented articles, when the same is (as in cases of emergency, and those only, it may be) made in open market." XVIII Opin. Att. Gen., 349.

[1] The provisions of the act of July 5, 1884 (23 Stat. L., 109), that purchases of supplies for the Quartermaster's and Commissary's departments in cases of emergency "must be at once reported to the Secretary of War for his approval" is directory only, and the failure of certain officers of these departments to make reports of such purchases does not invalidate the purchases or the payments therefor. 5 Compt. Dec., 259.

[2] This paragraph has appeared, as a proviso, in each annual appropriation bill since June 30, 1886. See acts of June 30, 1886 (24 Stat. L., 97); February 5, 1887 (24 ibid., 398); September 22, 1888 (25 ibid., 485); March 2, 1889 (ibid., 830); June 13, 1890 (26 ibid., 153); February 24, 1891 (ibid., 775); July 16, 1892 (27 ibid., 179); February 27, 1893 (ibid., 483); August 6, 1894 (28 ibid., 239); February 12, 1895 (ibid., 660). The several acts of appropriation for the support of the Army since that of June 30, 1886 (24 Stat. L., 96), have contained a proviso that no part of the appropriations "shall be expended for printing unless the same shall be done by contract, after due notice and competition, except in such case as the emergency will not admit of the giving notice for competition."

Purchase of means of transportation.
July 5, 1884, v. 23, p. 110.

1547. Hereafter all purchases of horses, mules, or oxen, wagons, carts, drays, ships and other seagoing vessels, also all other means of transportation, shall be made by the Quartermaster's Department, by contract, after due legal advertisement, except in cases of extreme emergency. *Act of July 5, 1884 (23 Stat. L., 110).*

Transportation of stores, etc., by contract.
July 5, 1884, v. 23, p. 109; Mar. 2, 1901, v. 31, p. 907.

1548. The number of draft animals purchased from this appropriation, added to those now on hand, shall be limited to such numbers as are actually required for the service; all transportation of stores by private parties for the Army shall be done by contract, after due legal advertisement, except in cases of emergency, which must be at once reported to the Secretary of War for his approval. *Ibid. (23 Stat. L., 109). Act of March 2, 1901 (31 Stat. L., 907).*

Limit of expenditures on buildings and grounds.
Feb. 27, 1893, v. 27, p. 484.

1549. Hereafter no expenditures exceeding five hundred dollars shall be made upon any building or military post, or grounds about the same, without the approval of the Secretary of War for the same, upon detailed estimates by the Quartermaster's Department; and the erection, construction, and repair of all buildings and other public structures in the Quartermaster's Department shall, as far as may be practicable, be made by contract, after due legal advertisement.[1] *Act of February 27, 1893 (27 Stat. L., 484).*

---

[1] This paragraph continued to appear as a proviso in several acts of appropriation for the support of the Army prior to the act of February 27, 1893 (27 Stat. L., 454). See acts of March 3, 1885 (23 Stat. L., 360); June 30, 1886 (24 ibid., 97); February 9, 1887 (ibid., 399); September 22, 1888 (25 ibid., 486); March 2, 1889 (ibid., 830); June 13, 1890 (26 ibid., 154); February 24, 1891 (ibid., 776); July 16, 1892 (27 ibid., 180); February 27, 1893 (ibid., 484). The same act requires that the posts at which hospital stewards' quarters are to be constructed shall be designated by the Secretary of War, and that such quarters shall, whenever practicable, be built by contract. 27 Stat. L., 484.

Government contracts, by whom made, binding force, etc.—Where a public agent acts in the line of his duty and by legal authority, his contracts made on account of the Government are public and not personal. They inure to the benefit of and are obligatory on the Government, not the officer. Hodgin *v.* Dexter, 1 Cranch, 345, 363; Parks *v.* Ross, 11 Howard, 362. The Government is not bound by the act of its agent, unless it clearly appear that he acted within the scope of his authority, or was employed as a public agent to do, or was held out as having authority to do, such act. Whiteside *v.* U. S., 93 U. S., 247; Lee *v.* Munroe, 7 Cranch, 366; Filer *v.* U. S., 9 Wall., 45. Where service was performed under a general appropriation, the contractor is not bound to know the condition of the appropriation. Myerle *v.* U. S., 33 Ct. Cls., 1.

Where a contract is subject to the approval of superior authority, such approval is a condition precedent. Monroe and Richardson *v.* U. S., 35 Ct. Cls., 199; Filor *v.* U. S., 9 Wallace, 45. Such approval need not be in writing. Speed *v.* U. S., 8 Wallace, 77; Monroe and Richardson *v.* U. S., 35 Ct. Cls., 199, 204.

Where a contract provides that an officer named in the contract may, on inspection, accept or reject any part of the work done under it if not, in his opinion, "strictly in accordance with the drawings and specifications," his decision, in the absence of fraud, or such gross error as would imply bad faith, is final. Driscoll *v.* U. S., 34 Ct. Cls., 508. Such action on the part of the officer being final and conclusive, it becomes the duty of the contractor, at his own expense, to "remedy any defect or unsatisfactory material or work" so rejected, by conforming the same to

Post bakeries, schools, kitchens, gardens, etc.
June 13, 1890, v. 26, p. 152.

1550. For the current fiscal year and thereafter there may be expended from the appropriation for regular supplies the amounts required for the necessary equipments of the bakehouse to carry on post bakeries; for the necessary furniture, text-books, paper, and equipments of the post schools; for the tableware and mess furniture for kitchens and mess halls; * * * each and all for use of the enlisted men of the Army. *Act of June 13, 1890 (26 Stat. L., 152).*

Post gardens and exchanges.
July 16, 1892, v. 27, p. 178.

1551. Hereafter no money appropriated for the support of the Army shall be expended for post gardens or exchanges, but this proviso shall not be construed to prohibit the use by post exchanges of public buildings or public transportation when, in the opinion of the Quartermaster-General, not required for other purposes. *Act of July 16, 1892 (27 Stat. L., 178).*

Contracts for subsistence supplies.
Apr. 14, 1818, c. 61, s. 7, v. 3, p. 427; Mar. 3, 1835, c. 49, s. 1, v. 4, p. 780; Mar. 2, 1861, c. 84, s. 10, v. 12, p. 220
Sec. 3715, R. S.

1552. Contracts for subsistence supplies for the Army, made by the Commissary-General, on public notice, shall provide for a complete delivery of such articles, on inspection, at such places as shall be stipulated.

Purchase of steel.
Feb. 4, 1891, v. 26, p. 767.

1553. No contract for the expenditure of any portion of the money herein provided, or that may be hereafter provided, for the purchase of steel shall be made until the same shall have been submitted to public competition by the Department by advertising. *Act of February 24, 1891 (26 Stat. L., 767).*

Purchases from Indians.
Jan. 19, 1891, s. 4, v. 26, p. 721.

1554. The Secretary of War is hereby authorized and directed when making purchases for the military posts or service on or near Indian reservations to purchase in open market, from the Indians as far as practicable, at fair and reasonable rates, not to exceed the market prices in the localities, any cattle, grain, hay, fuel, or other produce or merchandise they may have for sale and which may be

---

the drawings and specifications. Kihlberg *v.* U. S., 97 U. S., 97; Kimball *v.* U. S., 24 Ct. Cls., 122; Gleason *v.* Gosnell, 33 C. Cls. R., 65; Quinn *v.* U. S., 99 U. S., 32; Sweeny *v.* U. S., 109 ibid., 618; Martinsburg Co. *v.* March, 114 ibid., 549; Chicago R. R. Co. *v.* Price, 38 ibid., 185; Ogden *v.* U. S., 60 Fed. Rep., 725; Elliott *v.* R. R. Co., 74 ibid., 711.

Where extensions of time are granted to complete a contract, all prior delays or defaults are waived and can not be revived. Gleason & Gosnell *v.* U. S., 33 Ct. Cls., 65; Pigeon *v.* U. S., 27 ibid, 167, 175.

Where additional work was necessary, and the officer in charge ordered it to be done, and the Government received the benefit of it, the Government is liable. Haliday *v.* U. S., 33 Ct. Cls., 453.

Where performance is prevented by act of God no breach can be assigned, although no reference was made thereto in the contract. Gleason & Gosnell *v.* U. S., 33 Ct. Cls., 65; McDermott *v.* Jones, 2 Wall., 1, 7; Satterlee, administrator, *v.* U. S., 30 Ct Cls., 31, 50, and cases there cited.

required for the military service. *Sec. 4, act of January 19, 1891 (26 Stat. L., 721).*

Name of contractor to appear on supplies.
July 17, 1862, c. 200, s. 15, v. 12, p. 596.
Sec. 3731, R. S.

1555. Every person who shall furnish supplies of any kind to the Army or Navy shall be required to mark and distinguish the same with the name of the contractor furnishing such supplies, in such manner as the Secretary of War and the Secretary of the Navy may, respectively, direct; and no supplies of any kind shall be received unless so marked and distinguished.

Contracts for stationery, etc., limited to one year.
Jan. 31, 1868, Res. No. 8, v. 15, p. 246.
Sec. 3735, R. S.

1556. It shall not be lawful for any of the Executive Departments to make contracts for stationery or other supplies for a longer term than one year from the time the contract is made.

ASSIGNMENTS.

Transfers of contracts prohibited.
July 17, 1862, c. 200, s. 14, v. 12, p. 596.
Sec. 3737, R. S.

1557. No contract or order, or any interest therein, shall be transferred by the party to whom such contract or order is given to any other party, and any such transfer shall cause the annulment of the contract or order transferred, so far as the United States are concerned. All rights of action, however, for any breach of such contract by the contracting parties, are reserved to the United States.[1]

---

[1] This clause is imperative and bars any action by the assignor as well as the assignee. Wanless *v.* U. S., 6 Ct. Cls., 123. The purpose of the act of July 17, 1862 (sec. 3737, R. S.), prohibiting the transfer of Government contracts, was to secure the personal attention and services of the contractor and to render him liable to punishment under section 16 of the same act. * * * No formal or written transfer is necessary to bring the case within the prohibition of the act. It is sufficient to annul the contract that the facts disclose a substantial transfer. Francis *v.* U. S., 11 Ct. Cls., 638; Wheelan *v.* U. S., 5 Ct. Cls., 504; McCord's Case, 9 Ct. Cls., 155.

In view of the positive prohibition of section 3737, Revised Statutes, that no contract or interest therein shall be transferred by the contractor, and the further provision that any such transfer shall operate as an annulment of the contract, "so far as the United States are concerned," *held* that an officer of the Army representing the United States in a contract for military transportation would not be authorized, of his own discretion, to consent or waive objection to an assignment, in whole or in part, of a contract, by the contractor, so as to admit the assignee to perform the service.(*a*) Dig. Opin. J. A. G., par. 897.

Where a contract has been once formally entered into with a certain party, for the officer representing the United States to assume to admit additional parties into the

---

[a] That an assignment of a contract transfers no legal claim or right of action to the assignee, and that a contract when assigned is no longer binding upon the United States, see Wheeler *v.* U. S., 5 Ct. Cls., 504; Wanless *v.* U. S., 6 ibid., 123; Gill *v.* U. S., 7 ibid., 523; McCord *v.* U. S., 9 ibid., 156; Francis *v.* U. S., 11 ibid., 638; X Opin. Att. Gen., 523. But it has been held by the Attorney-General that the statute on the subject (sec. 3737, R. S.) is intended simply for the benefit and protection of the United States, which, therefore, is not compelled to avail itself of a transfer by the contractor to annul the contract, but may recognize the same and accept and pay the assignee. "Were it to be held," observes the Attorney-General, "that a transfer of an interest would absolutely avoid the contract, it would enable any party making a contract with the United States to avoid it by simply transferring an interest therein, which is a construction manifestly inadmissible." Opinion in the case of the "Fifteen per cent contracts" (XV Opins., 235). And similarly held by the same authority in a later opinion. in XVI Opins., 277, that while the United States may avail itself of an assignment to declare the contract annulled, it is not required to do so, but, if deemed to be for its interests, may recognize the assignee. But it is clear that an officer of the Army could not properly assume to treat an assignment of a contract (or interest therein) as valid without the authority and direction of the Secretary of War. That for a mail contractor to contract with another person to transport the mail for him, and as his servant or employee, was not an assignment of his contract with the United States, was held in the recent case of Frye *v.* Burdick, 67 Maine, 408.

PENAL OFFENSES.

Par.
1558. Members of Congress not to be interested in contracts.
1559. The same; what interest allowable.
1560. The same; stipulation to be inserted.
1561. The same; penalty.
1562. Consideration for procuring contract, etc.
Par.
1563. Compensation in matter to which United States is a party.
1564. Bribery of public officer.
1565. Accepting bribe.
1566. Extortion.

Members of Congress not to be interested in contracts.
Apr. 21, 1868, c. 48, s. 1, v. 2, p. 484; June 22, 1874, c. 389, v. 18, p. 177.
Sec. 3739, R. S.

1558. No Member of or Delegate to Congress shall directly or indirectly, himself, or by any other person in trust for him, or for his use or benefit, or on his account, undertake, execute, hold, or enjoy, in whole or in part, any contract or agreement made or entered into in behalf

agreement and undertaking (thus in fact consenting to a transfer by the contractor of an interest in the contract), would be wholly unauthorized. Ibid., par. 898.

A mere power of attorney given by a contractor to another person authorizing him to receive for the contractor moneys coming due under the contract can not, of course, operate as a transfer of an interest therein; but where, by a written agreement between a contractor and another party, the latter was empowered to receive the payments from the United States, in consideration of which he undertook to continue and complete the work contracted for, *held* that such agreement was a power coupled with an interest, and operated as a transfer within the meaning of section 3737, Revised Statutes. (*b*) Ibid., par. 899. A contractor with the United States for the construction of a public improvement does not, by contracting with a third party to furnish material for such work, make an assignment or a transfer of his contract within the prohibition of section 3737, Revised Statutes. U. S. *v.* Farley, 91 Fed. Rep., 474.

Under no circumstances can the United States permit or recognize the transfer of a contract to a third party, for the reason that such transfers are prohibited by section 3737 of the Revised Statutes, and that, if the United States could permit any such transfer, its assent would release the sureties on the contractor's bond. 3 Dig. 2nd Compt. Dec., 113.

Under section 3737, Revised Statutes, the assignment of a contract wholly invalidates it, unless the Government elects to treat it as still in force. Where the Government accepts from the assignee work or materials under the contract, or permits a part performance, it ratifies the assignment. (*c*) Where the War Department assented to the transfer of a contract for the manufacture of ordnance from one iron works to another, and accepted deliveries from the latter, *held* that the contract remained in full force. Dig. Opin. J. A. Gen., p. 299, par. 61.

An assignment, to have the effect of invalidating a contract, need not be express, nor need it be technical, formal, or written. (*d*) It may be evidenced by the various facts or circumstances illustrating the relations and intention of the parties. Ibid., par. 902.

This provision is intended only for the protection of the United States. The Government may avail itself of the assignment or transfer to annul the contract, but it is not compelled to do so. XVI Opin. Att. Gen., 278; 15 ibid., 236. Dulaney *v.* Scudder 94, Fed. Rep., 6.

There is a distinction between the assignment of a Government contract and an assignment of a claim for money due under a contract. The former is void under the act of July 17, 1862 (sec. 3737, R. S.), and passes no title, legal or equitable; the latter passes title to the money due, as though it were the sale of a chattel. McCord *v.* U. S., 9 Ct. Cls., 155; Lawrence *v.* U. S., 8 ibid., 252. The sale of a quartermaster's voucher by a contractor to a third party works a transfer of his claim against the Government, or of so much of it as is represented by the voucher. But such vouchers are in no sense negotiable paper, and the purchaser will take them subject to all the equities that may exist against a contractor. Lawrence & Crowell *v.* U. S.,

---

[b] See authorities above cited, XV Opin. Att. Gen., 235; 16 ibid., 277; Francis *v.* U. S., 11 Ct. Cls., 638

[c] Wheeler *v.* U. S., 5 Ct. Cls., 504.

[d] Francis *v.* U. S., 11 ibid., 638.

of the United States, by any officer or person authorized to make contracts on behalf of the United States. Every person who violates this section shall be deemed guilty of a misdemeanor, and shall be fined three thousand dollars. All contracts or agreements made in violation of this section shall be void; and whenever any sum of money is advanced on the part of the United States, in consideration of any such contract or agreement, it shall be forthwith repaid; and in case of refusal or delay to repay the same, when demanded, by the proper officer of the Department under whose authority such contract or agreement shall have been made or entered into, every person so refusing or delaying, together with his surety or sureties, shall be forthwith prosecuted at law for the recovery of any such sum of money so advanced.[1]

What interest allowable.
Apr. 21, 1808, c. 48, s. 2, v. 2, p. 484; Feb. 27, 1877, v. 19, p. 249.
Sec. 3740, R. S.

1559. Nothing contained in the preceding section shall extend, or be construed to extend, to any contract or agreement made or entered into, or accepted by any incorporated company, where such contract or agreement is made

---

8 ibid., 252. An officer purchasing an article is without authority of law to issue a voucher for the purchase money to a third person, at the vendor's request, there being no privity of contract between the United States and such third person. Johnston *v.* U. S., 13 ibid., 217.

It has, however, been held that section 3477, which prohibits or makes null and void all transfers and assignments of claims against the Government does not apply to involuntary assignments in bankruptcy (Erwin *v.* United States, 97 U. S., 392), or even to voluntary assignments for the benefit of creditors (Goodman *v.* Niblack, 102 U. S., 556). It seems to me that the reasoning of these cases applies with equal force to section 3737. 2 Compt. Dec., 50.

Under sections 3477 and 3737 of the Revised Statutes, a person having a contract can not assign any part of the money coming to him thereunder so as to affect any one but himself, and the acceptance by a disbursing agent of the United States of an order upon such fund has no validity against third persons. Greeneville Sav. Bank et al. *v.* Lawrence et al., 76 Fed. Rep., 545.

[1] Under sections 3739–3742, Revised Statutes, it is illegal for an officer of the United States to enter into a contract or make a purchase of a firm or association (not incorporated) of which a Member of or Delegate to Congress is a member, or in which one is pecuniarily interested.(*a*) Dig. Opin., Opin. J. A. G., par. 895.

Paragraph 671 of the Army Regulations of 1901 prohibits purchases by officers of the Army "from any other person in the military service." *Held* that this prohibition did not embrace civilians employed in the public service under the War Department, or in connection with the military administration, and therefore did not preclude the making of a contract by an ordnance officer, as representing the United States, with a civil employee at an arsenal, for the use of an invention patented by the latter.(*b*) Ibid., par. 896.

The form of a proposed contract contained the stipulation that "no person belonging to or employed in the military service of the United States is or shall be admitted to any share or part of this contract." The description "person employed in" is understood to mean all such clerks, mechanics, laborers, or other civilians as are legally employed by the military authorities in or in connection with military works, operations, or other authorized transactions. So where a lowest bidder was a civilian laborer at the Springfield Armory, *advised* that the contract be made with the next lowest bidder, who was under no such incapacity. Ibid., 296, par. 52.

---

[a] That section 3739, Revised Statutes, does not affect contracts made with persons who have been simply elected Members of or Delegates to Congress, but have not actually become such by being sworn in—see opinion of the Attorney-General of May 19, 1877 (XV Opins. Att. Gen.), citing 16 ibid., 406.

[b] See U. S. *v.* Burns, 12 Wallace, 251, 252; X Opins. Att. Gen., 2; 20 ibid., 329.

for the general benefit of such incorporation or company; nor to the purchase or sale of bills of exchange or other property by any Member of or Delegate to Congress, where the same are ready for delivery, and payment therefor is made, at the time of making or entering into the contract or agreement.

Stipulation that no Member of Congress has an interest.
Apr. 21, 1808, c. 48, s. 3, v. 2, p. 484; Feb. 27, 1877, c. 69, v. 19, p. 249.
Sec. 3741, R.S.

1560. In every such contract or agreement to be made or entered into, or accepted by or on behalf of the United States, there shall be inserted an express condition that no Member of [or Delegate to] Congress shall be admitted to any share or part of such contract or agreement, or to any benefit to arise thereupon.[1]

The same.
Apr. 21, 1808, c. 48, s. 4, v. 2, p. 484; Feb. 27, 1877, c. 69, v. 19, p. 249.
Sec. 3742, R.S.

1561. Every officer who, on behalf of the United States, directly or indirectly makes or enters into any contract, bargain, or agreement, in writing or otherwise, other than such as are hereinbefore excepted, with any Member of or Delegate to Congress, shall be deemed guilty of a misdemeanor, and shall be fined three thousand dollars.[1]

Prohibition upon taking consideration for procuring contracts, offices, etc.
July 16, 1862, c. 180, v. 12, p. 577.
Feb. 25, 1863, c. 61, v. 12, p. 696.
Sec. 1781, R.S.

1562. Every member of Congress or any officer or agent of the Government who, directly or indirectly, takes, receives, or agrees to receive, any money, property, or other valuable consideration whatever, from any person for procuring, or aiding to procure, any contract, office, or place, from the Government or any Department thereof, or from any officer of the United States, for any person whatever, or for giving any such contract, office, or place to any person whomsoever, and every person who, directly or indirectly, offers or agrees to give, or gives, or bestows any money, property, or other valuable consideration whatever, for the procuring or aiding to procure any such contract, office, or place, and every member of Congress who, directly or indirectly, takes, receives, or agrees to receive any money, property, or other valuable consideration whatever after his election as such member, for his attention to, services, action, vote, or decision on any question, matter, cause, or proceeding which may then be pending, or may by law or under the Constitution be brought before him in his official capacity, or in his place as such member of Congress, shall be deemed guilty of a misdemeanor, and shall be imprisoned not more than two years and fined not more than ten thousand dollars. And any such contract or agreement may, at the option of the President, be declared absolutely null and void; and any member of Congress or officer convicted of a violation of this section shall, moreover, be disqualified from holding any office of honor, profit, or trust under the Government of the United States.[1]

---

[1] See note to section 1558 p. 585.

Upon taking compensation in matters to which United States is a party.
June 11, 1864, c. 119, v. 13, p. 123.
Sec. 1782, R.S.

1563. No Senator, Representative, or Delegate, after his election and during his continuance in office, and no head of a Department, or other officer or clerk in the employ of the Government, shall receive or agree to receive any compensation whatever, directly or indirectly, for any services rendered, or to be rendered, to any person, either by himself or another, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter or thing in which the United States is a party, or directly or indirectly interested, before any Department, court-martial, Bureau, officer, or any civil, military, or naval commission whatever. Every person offending against this section shall be deemed guilty of a misdemeanor, and shall be imprisoned not more than two years, and fined not more than ten thousand dollars, and shall, moreover, by conviction therefor, be rendered forever thereafter incapable of holding any office of honor, trust, or profit under the Government of the United States.[1]

Bribery of any United States officers.
Ibid.
Mar. 3, 1863, c. 76, s. 6, v. 12, p. 740.
July 13, 1866, c. 184, s. 62, v. 14, p. 168.
July 18, 1866, c. 201, s. 35, v. 14, p. 186.
U. S. *v.* Worrall, 2 Dall., 388.
Sec. 5451, R.S.

1564. Every person who promises, offers, or gives, or causes or procures to be promised, offered, or given, any money or other thing of value, or makes or tenders any contract, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, to any officer of the United States, or to any person acting for or on behalf of the United States in any official function, under or by authority of any department or office of the Government thereof, or to any officer or person acting for or on behalf of either House of Congress, or of any committee of either House, or both Houses thereof, with intent to influence his decision or action on any question, matter, cause, or proceeding which may at any time be pending, or which may by law be brought before him in his official capacity, or in his place of trust or profit, or with intent to influence him to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States, or to induce him to do or omit to do any act in violation of his lawful duty, shall be punished as prescribed in the preceding section.[1]

---

[1] Sections 1781 and 1782 make it illegal for an officer of the United States to have such connection with a Government contract as an agent, attorney, or solicitor assumes when he procures or aids to procure such a contract for another, or when he prosecutes for another against the Government any claim founded on a Government contract, But they do not prohibit executive officers of the Government, including pension agents, from contracting directly with the Government as principals in matters separate from their offices and the performance of their official duties, or being interested in such contracts after they are procured. XIV Opin. Att. Gen., 482; *ibid.*, 133.

No person dealing with a public officer can be permitted to influence him in a way prejudicial to the Government. Garman *v.* U. S., 34 Ct. Cls., 237.

United States officer accepting bribe, etc. Ibid. Mar. 3, 1863, c. 76, s. 6, v. 12, p. 740. July 13, 1866, c. 184, s. 62, v. 14, p. 168. July 18, 1866, c. 201, s. 35, v. 14, p. 186. Mar. 3, 1875, c. 144, v. 18, p. 479. Sec. 5501, R.S.

1565. Every officer of the United States, and every person acting for or on behalf of the United States, in any official capacity under or by virtue of the authority of any department or office of the Government thereof; and every officer or person acting for or on behalf of either House of Congress, or of any committee of either House, or of both Houses thereof, who asks, accepts, or receives any money, or any contract, promise, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, with intent to have his decision or action on any question, matter, cause, or proceeding which may, at any time, be pending, or which may be by law brought before him in his official capacity, or in his place of trust or profit, influenced thereby, shall be punished as prescribed in the preceding section.[2]

Officer of the United States guilty of extortion. Mar. 3, 1825, c. 65, s. 12, v. 4, p. 118. Mar. 3, 1875, c. 144, v. 18, p. 479. Mar. 3, 1875, c. 145, v. 18, pp. 479, 480. Sec. 5481, R.S.

1566. Every officer of the United States who is guilty of extortion under color of his office shall be punished by a fine of not more than five hundred dollars, or by imprisonment not more than one year, except those officers or agents of the United States otherwise differently and specially provided for in subsequent sections of this chapter.

---

[1] Though an officer may have full power to enter into a contract, yet the contract may be void for fraud as having been made by the collusion of the officer, and all negotiations and circumstances surrounding the contract, as well as its terms, may be examined to prove fraud. Hitchcock *v.* City of Galvestion, 3 Woods, 292. Three persons, one of them the Government agent who had charge of letting the contract, entered into an agreement by which two were to do the work, and each was to have one-third of the profits. *Held* that such a contract was a fraud on the Government, and that an action founded thereon by one partner against the other could not be maintained. Bartle *v.* Coleman, 3 Cranch, C. C., 283.

[2] An agreement to use personal influence with a Government agent in order to procure a Government contract is void. So where plaintiff, being consul-general of the Turkish Government, agreed with defendant to use his personal influence with a special agent of the Turkish Government to procure contracts between that Government and defendant, and did use such influence with success, it was held that plaintiff could maintain no action for his services in procuring such contracts. Oscanyan *v.* Arms Company, 13 Otto, 261.

For the penalty referred to in this paragraph see section 5500, Revised Statutes, which provides that "every person who promises, offers, gives, or causes or procures to be promised, offered, or given, any money or other thing of value, or makes or tenders any contract, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, to any member of either House of Congress, either before or after such member has been qualified or has taken his seat, with intent to influence his vote or decision on any question, matter, cause, or proceeding which may be at any time pending in either House of Congress, or before any committee thereof, shall be fined not more than three times the amount of money or value of the thing so offered, promised, given, made, or tendered, or caused or procured to be so offered, promised, given, made, or tendered, and shall be, morever, imprisoned not more than three years."

THE RETURNS OFFICE.

Par.
1567. The returns office; contracts to be in writing.
1568. Oath to return, etc.
Par.
1569. Penalty for omission to make return.
1570. Instructions to be furnished.

The returns office; contracts to be in writing.
June 2, 1862, c. 1, s. 93, v. 12, p. 411.
Sec. 3744, R.S.

1567. It shall be the duty of the Secretary of War, of the Secretary of the Navy, and of the Secretary of the Interior to cause and require every contract made by them severally on behalf of the Government, or by their officers under them appointed to make such contracts, to be reduced to writing, and signed by the contracting parties with their names at the end thereof; a copy of which shall be filed by the officer making and signing the contract in the Returns Office of the Department of the Interior, as soon after the contract is made as possible, and within thirty days, together with all bids, offers, and proposals to him made by persons to obtain the same, and with a copy of any advertisement he may have published inviting bids, offers, or proposals for the same. All the copies and papers in relation to each contract shall be attached together by a ribbon and seal, and marked by numbers in regular order, according to the number of papers composing the whole return.[1]

---

[1] It may be considered as settled that so much of section 3744 as provides that all contracts shall "be reduced to writing and signed by the contracting parties with their names at the end thereof" is mandatory, and contracts which do not comply with its requirements are void. In looking at the scope and purpose of this law and at the words in which it is couched, I can not doubt of the intention of Congress in its enactment. To my mind it is clear that it was designed to require every executory contract, at least, to be put in writing so that its terms might not be mistaken and that the character and extent of the outstanding engagements of the United States might at all times be known to the executive and legislative departments, or be capable of being ascertained in a reasonable time and with appropriate exactitude. Henderson *v.* U. S., 4 Ct. Cls., 75, 83. There is no class of cases in which a statute for preventing frauds and perjuries is more needed than in this. And we think that the statute in question was intended to operate as such. It makes it unlawful for contracting officers to make contracts in any other way than by writing signed by the parties. This is equivalent to prohibiting any other mode of making contracts. Clark *v.* U. S., 95 U. S., 539, 542; South Boston Iron Co., 18 Ct. Cls., 165, 176. The provisions of this section apply to contracts made in emergencies. Cobb et al. *v.* U. S., 18 Ct. Cls., 514, 532; Clark *v.* U. S., 95 U. S., 539. Offers and acceptances by letter are preliminary memoranda only, and do not constitute a valid contract within the meaning of the statute. South Boston Iron Co. *v.* U. S., 118 U. S., 37, 42. Where, however, a parol contract has been wholly or partly executed on one side, the party performing will be entitled to recover the fair value of his property or services as upon an implied contract for a quantum meruit. Clark *v.* U. S., 95 U. S., 539. See also Warren & Goss *v.* U. S., 23 Ct. Cls., 77; South Boston Iron Co. *v.* U. S., 18 ibid., 165, and 118 U. S., 37, Clark *v.* U. S., 95 U. S., 543; The International Contracting Co. *v.* Lamont, 2 Ct. App. D. C., 532. See also Lindsley *v.* U. S., 4 C. Cls. R., 359; Burchiel *v.* U. S., 4 Ct. Cls., 549; Bernheimer *v.* U. S., 5 Ct. Cls., 65.

The verification and return provided for in these sections have been held to be mandatory only upon the officer who made the contract. A contract reduced to writing and executed with all the formality which the law requires will not be invali-

Oath to return, etc. Sec. 2, *ibid.* Sec. 3745, R.S. **1568.** It shall be the further duty of the officer, before making his return, according to the preceding section, to affix to the same his affidavit in the following form, sworn to before some magistrate having authority to administer oaths: "I do solemnly swear (or affirm) that the copy of contract hereto annexed is an exact copy of a contract made by me personally with ———; that I made the same fairly without any benefit or advantage to myself, or allowing any such benefit or advantage corruptly to the said ———, or any other person; and that the papers accompanying include all those relating to the said contract, as required by the statute in such case made and provided."

Penalty for omitting to make returns. Sec. 3, *ibid.* Sec. 3746, R.S. **1569.** Every officer who makes any contract, and fails or neglects to make return of the same, according to the provisions of the two preceding sections, unless from unavoidable accident or causes not within his control, shall be deemed guilty of a misdemeanor, and shall be fined not less than one hundred dollars nor more than five hundred, and imprisoned not more than six months.

Instructions to be furnished. Sec. 5, *ibid.* Sec. 3747, R.S. **1570.** It shall be the duty of the Secretary of War, of the Secretary of the Navy, and of the Secretary of the Interior to furnish every officer appointed by them with authority to make contracts on behalf of the Government with a printed letter of instructions, setting forth the duties of such officer under the two preceding sections, and also to furnish therewith forms, printed in blank, of contracts to be made, and the affidavit of returns required

---

dated by a failure of the officer to make a proper return of the same. That is made his exclusive duty by the law, and he alone is to be punished for it by the stringent and severe penalties prescribed by the act. Henderson *v.* U. S., 4 Ct. Cls., 75, 81; Clark *v.* U. S., 95 U. S., 539; Power *v.* U. S., 18 Ct. Cls., 263.

A mere understanding or oral agreement can not constitute a contract in the War Department. Were it not indeed for the provisions of section 3744, Revised Statutes, the acceptance of a bid would, under the general law of contracts, bind the United States. But this section has been construed by the Supreme Court as being in the nature of a statute of frauds and mandatory in its requirements, and therefore making it essential that a contract, to be legal and obligatory, shall be in writing and signed by the parties. (*a*) The mere proposal of a bidder, accepted on the part of the Government, does not therefore operate as a contract, but is simply a proceeding preliminary to contract; nor does such an acceptance bind the United States to enter into a contract. Dig. Opin. J. A. Gen., 295, par. 48.

It is proper to remark that in the event of a suit being instituted against a principal or surety on a contract of the United States, the copy of the contract filed in the Returns Office would have no evidential value, and a copy of the original filed in the office of the Comptroller of the Treasury under the provisions of section 3743, Revised Statutes, paragraph 1185, *supra*, would have to be produced subject to the authentication required in section 886 of the Revised Statutes.

---

a Clark *v.* U. S., 95 U. S., 539; South Boston Iron Co. *v.* U. S., 118 U. S., 37.

to be affixed thereto, so that all the instruments may be as nearly uniform as possible.[1]

COPY FOR AUDITOR OF TREASURY FOR WAR DEPARTMENT.

Contracts to be filed with Auditors.
July 31, 1894, s. 18, v. 28, p. 210.
Sec. 3743, R.S.

1571. All contracts to be made by virtue of any law, and requiring the advance of money, or in any manner connected with the settlement of public accounts, shall be deposited promptly in the offices of the Auditors of the Treasury, according to the nature of the contracts: *Provided*, That this section shall not apply to the existing laws in regard to the contingent funds of Congress.[2] *Act of July 31, 1894 (28 Stat. L., 210).*

THE EIGHT-HOUR LAW.

Par.
1572. Eight hours to be a day's work.
1573. The same; contracts, emergencies.
Par.
1574. The same; penalty.
1575. The same; exceptions.

Eight hours to be a day's work.
Sec. 3738, R.S.

1572. Eight hours shall constitute a day's work for all laborers, workmen, and mechanics who may be employed by or on behalf of the United States.[3]

The same; contractors; emergencies.
Aug. 1, 1892, v. 27, p. 340.

1573. That the service and employment of all laborers and mechanics who are now or may hereafter be employed by the Government of the United States, by the District of Columbia, or by any contractor or subcontractor upon any of the public works of the United States or of the said District of Columbia, is hereby limited and restricted to eight hours in any one calendar day, and it shall be unlawful for any officer of the United States Government or of the District of Columbia or any such contractor or subcontractor whose duty it shall be to employ, direct, or control the services of such laborers or mechanics to require or permit any such laborer or mechanic to work more than eight hours in any calendar day except in case of extraordinary emergency.[1] *Act of August 1, 1892 (27 Stat. L., 340).*

---

[1] For requirements of regulations in respect to the furnishing of contracts, and papers pertaining thereto, to the Returns Office of the Interior Department, see.

[2] See, for other requirements of law and regulations in respect to the disposition of copies of contracts, paragraphs 1539 and 1567, *ante*.

[3] Congress has power to regulate the hours of labor which may be required or permitted on public works of the United States, though such works may be carried on within the territorial jurisdiction of a State. U. S. *v.* San Francisco Bridge Co., 88 Fed. Rep., 891.

The eight-hour law is in the nature of a direction from a principal to his agent, in which third party has no interest. It does not make a contract, nor prevent officers from contracting. by express agreement, for day's labor of more or less than eight hours. Martin *v.* U. S., 12 Ct. Cls., 87 and 94 U. S., 400.

The eight-hour law does not establish an inflexible rule for the payment of wages. Its intent is not to increase wages, but to elevate the condition of laboring men by diminishing their hours of labor. Averill *v.* U. S., 14 Ct. Cls., 200.

Section 3738, Revised Statutes, providing that eight hours shall constitute a day's work "for all laborers, workmen, and mechanics" in the employ of the Government, does not include a night watchman employed in a Government office. Gordon *v.* U. S., 31 ibid., 254.

Penalty for violation by officer or contractor. Sec. 2, *ibid.*

1574. That any officer or agent of the Government of the United States or of the District of Columbia, or any contractor or subcontractor whose duty it shall be to employ, direct, or control any laborer[2] or mechanic employed upon any of the public works of the United States or of the District of Columbia who shall intentionally violate any provision of this act, shall be deemed guilty of a misdemeanor, and for each and every such offense shall upon conviction be punished by a fine not to exceed one thousand dollars or by imprisonment for not more than six months, or by both such fine and imprisonment, in the discretion of the court having jurisdiction thereof.[3] *Sec. 2, ibid.*

---

[1] The term "extraordinary emergency," employed in the first section of the act of August 1, 1892, can not properly be construed in advance as referring or applicable to any particular class of cases. The question whether there is or was such emergency should be left to be determined by the facts of each special instance as it arises. A case in which it appeared that a compliance with the statute was not possible might well be held to be one of "extraordinary emergency." Dig. Opin. J. A. G., par. 1239.

[2] *Held*, that the term "laborer," as used in the act of 1892, was apparently intended in a comprehensive sense, and that to declare certain classes of employment as "peculiar," and therefore excepted from the operation of the act, would be a restriction not warranted by the language of the statute. Thus a proposed regulation excepting "watchmen, messengers, teamsters, engineers, firemen, seamen," and some others, as not included in the description "laborers and mechanics," not recommended to be adopted. Dig. Opin. J. A. Gen., 380, par. 4.

Seamen on a Government vessel are employed upon the "public works of the United States" within the meaning of the act of August 1, 1892 (27 Stat. L., 340), when engaged in removing obstructions to navigation in rivers and harbors, and to exact from them more than eight hours' labor per day at this work or in the actual care and repair of appliances necessary to carry it on will subject the offender to indictment. U. S. *v.* Jefferson, 60 Fed. Rep., 736.

Extra pay fixed by statute for services in excess of eight hours a day is a matter of public policy which can not be interfered with by a postmaster. Rush *v.* U. S., 25 Ct. Cls., 223.

A timber dry dock is one of the "public works" of the United States under the eight-hour law of August 1, 1892. XX Opin. Att. Gen., 445.

[3] The original statute on this subject—the act of June 25, 1868, incorporated in section 3738, Revised Statutes—merely provided that eight hours should "constitute a day's work" for laborers, etc., employed by the United States. It has been held by the Supreme Court, U. S. *v.* Martin, 94 U. S., 400, (*a*) that this enactment was merely "a direction by the Government to its agents," not "a contract between the Government and its laborers, that eight hours shall constitute a day's work," and that it did not "prevent the Government from making agreements with them by which their labor may be more (or less) than eight hours a day." The act thus failed of its apparent object. To cure this defect was passed the act of August 1, 1892, chapter 352. *Held*, therefore, that the term "public works of the United States," used in the first section of the latter act, should not be narrowly construed. Dig. Opin. J. A. G., par. 1235.

Thus held that the construction of levees on the banks of the Mississippi River, in accordance with the plans of the Mississippi River Commission, was a public work

---

a And see XIX Opin. Att. Gen., 685.

Present contracts not affected. Sec. 3, *ibid.*

1575. The provisions of this act shall not be so construed as to in any manner apply to or affect contractors or subcontractors, or to limit the hours of daily service of laborers or mechanics engaged upon the public works of the United States or of the District of Columbia for which contracts have been entered into prior to the passage of this act. *Sec. 3*, *ibid.*

BONDS TO SECURE PAYMENT FOR LABOR AND MATERIALS.

Penal bond to include security for labor and materials. Aug. 13, 1894, v. 28, p. 278.

1576. That hereafter any person or persons entering into a formal contract with the United States for the construction of any public building, or the prosecution and completion of any public work, or for repairs upon any

---

of the United States in the sense of the act of August 1, 1892, chapter 352, section 1, although the United States did not own the land. A proprietorship in or jurisdiction over the thing constructed is not necessary. The United States expends annually more than twenty millions for the improvement of rivers and harbors, but the greater part of this is done without acquiring title or jurisdiction to or over the premises. The question under the act is not in whom is the title or jurisdiction, but who is doing the work. The construction of these levees is a particular work appropriated for by Congress and to be contracted for by the United States. It is therefore one of the public works of the United States, and subject to the provisions of this statute.(*a*) Ibid., par. 1236.

Held, that it was not essential that the requirement of the act of August 1, 1892, be embodied in a contract, the law itself being self-acting. The responsibility rests on contractors to comply with it, irrespective of the terms and conditions of their contracts. The officers who enter into contracts on behalf of the United States are not charged with the duty of enforcing the law with reference to those with whom they contract, the latter being directly responsible in the matter. Any construction by the War Department of the requirements of the act would, if erroneous and not sustained by the courts, be no protection to contractors. Ibid., par. 1237.

Inquiry having been made of the War Department by certain contractors whether the men employed on dredges, scows, and tugs on Lake Erie, under contracts with the United States, were not to be regarded as excepted from the application of the act of 1892, *held* that it was not the duty or province of this Department to determine such questions, but the same were for the courts to decide, on trials under the second section of the act, of persons charged with violations of its provisions. Neither this or other Department of the Government can lay down rules or make constructions of the law for contractors which would effectually protect them were they brought to trial.(*b*) Ibid., par. 1238.

No provision is contained in the act of 1892 for the suspension of its operation, and the Secretary of War has no power to suspend it as to certain work or places of work on the theory that an "emergency" exists as to the same. Nor can he lay down in advance any general rule as to what would be such an emergency as would relieve an officer or contractor from liability, or give him an immunity from prosecution. The question of the existence of an emergency is to be determined, in the first instance, by the person carrying on, or in charge of the work; in the second, by the court, if the case come before one. It may be said generally that when the emergency can be foreseen it is not extraordinary; that increased expense and inconvenience can not constitute an emergency which can not be foreseen and guarded against. Ibid., par. 1240.

---

[a] In the recent case of U. S. *v.* Jefferson, 60 Fed. Rep., 736, it is held that seamen employed on a steam snag boat belonging to the War Department, engaged in removing obstructions to navigation, were employed upon a "public work of the United States," and that the master of the boat, in exacting from them more than eight hours labor per diem, was indictable under the act of August 1, 1892.

[b] In a communication to the Secretary of War of August 29, 1892, the Attorney-General, whose opinion had been asked with regard to the application in general of the act to the "construction of levees on the Mississippi River," declines to give an official opinion with a view to the guidance of persons who may propose to enter in contract relations with the United States, in the absence of a special case requiring the action of the Secretary. See XX Opin. Att. Gen., 459.

public building or public work, shall be required before commencing such work to execute the usual penal bond, with good and sufficient sureties, with the additional obligations that such contractor or contractors shall promptly make payments to all persons supplying him or them labor and materials in the prosecution of the work provided for in such contract; and any person or persons making application therefor, and furnishing affidavit to the Department under the direction of which said work is being, or has been, prosecuted that labor or materials for the prosecution of such work has been supplied by him or them, and payment for which has not been made, shall be furnished with a certified copy of said contract and bond. upon which said person or persons supplying such labor and materials shall have a right of action, and shall be authorized to bring suit in the name of the United States for his or their use and benefit against said contractor and sureties and to prosecute the same to final judgment and execution: *Provided*, That such action and its prosecutions shall involve the United States in no expense.[1] *Act of August 13, 1894* (*28 Stat. L.*, *278*).

Action on bond for labor or materials furnished.

---

[1] When a contract is entered into for the construction of any public building, of the prosecution and completion of any public work, or for repairs on any public building or public work, the contractor will be required, before entering upon performance of the same, to include in the bond given for the faithful performance of the contract the further obligation that he will promptly make payments to all persons who supply him with labor and materials for the prosecution of the work provided for in such contract. A certified copy of this contract and bond will be furnished to any person who has supplied such labor or materials, upon his application to the War Department, accompanied by an affidavit that the labor or materials have been supplied by him and have not been paid for by the contractor. Par. 644, A. R., 1901.

The act of August 13, 1894, which requires that the bond given to the United States by any contractor on a Government work shall contain the additional obligation that such contractor will promptly make payments to all persons supplying him with labor, materials, etc., does not establish any privity between the United States and such persons so as to authorize the officers of the Government to satisfy such claims from the moneys due the contractor on the failure of the latter to do so. 3 Compt. Dec., 708.

The act of August 13, 1894, giving to persons supplying labor and materials to a contractor on a Government work the right to maintain a suit in the name of the United States for their own benefit against the contractor and the sureties on his bond, does not authorize payment of the amount due the contractor from the United States to the sureties upon their claim that they will be held liable for certain amounts due for labor and materials which the contractor had failed to pay. Ibid.

When a contract has been fully completed payment of the balance remaining due from the United States to one of two copartners appearing as contractors in the name of the partnership will be a valid acquittance of the United States whether the other partner was ever legally bound as a party to the contract or not. Ibid.

When the Government, under the terms of a contract, takes possession of and finishes the uncompleted portion of the work for less than the amount which would have been payable to the contractor therefor, the latter is not entitled to the profit thus accruing to the Government. Ibid.

Where, in the erection of a public building, the United States reserves the right to withhold a part of the money in case the contractor fails to pay claims for material and labor, the contractor can not, by an assignment of moneys so withheld, give the

Security for costs.
Sec. 2, *ibid.*

1577. Provided that in such case the court in which such action is brought is authorized to require proper security for costs in case judgment is for the defendant. *Sec. 2, ibid.*

INSPECTION OF FUEL IN THE DISTRICT OF COLUMBIA.

Par.
1578. Appointment of inspectors.
1579. Certificates of appointment.
Par.
1580. No payment without certificate.

Inspection of fuel in District of Columbia.
July 11, 1870, s. 1, v. 16, p. 229.

Appointment of inspectors, etc.
Mar. 2, 1895, s. 6, v. 28, p. 808.
Sec. 3711, R. S.

1578. It shall not be lawful for any officer or person in the civil, military, or naval service of the United States in the District of Columbia to purchase anthracite or bituminous coal or wood for the public service except on condition that the same shall, before delivery, be inspected and weighed or measured by some competent person to be appointed by the head of the Department or chief of the branch of the service for which the purchase is made from among the persons authorized to be employed in such Department or branch of the service: *Provided*, That the weigher or measurer of the Navy Department may be appointed outside of said Department, and that such weigher and measurer shall give bond and be paid as heretofore provided by law. The person appointed under this section shall ascertain that each ton of coal weighed by him shall consist of two thousand two hundred and forty

---

assignee any standing to participate in the fund until all labor and material claims have been paid. Greeneville Sav. Bank et al. *v.* Lawrence et al., 76 Fed. Rep., 545.

The act of August 13, 1894, 28 Stat. L., 278, for the protection of persons furnishing material and labor for the construction of public works, and providing that, on furnishing an affidavit to the department of the Government, any person may have a copy of the bond and contract, upon which such person may bring suit, has reference only to the procuring of the copy of the contract and bond, and is not a prerequisite to the right to maintain an action. This requirement is for the purpose of satisfying the Government official that the person has furnished labor or material on the particular contract. Surety Co. *v.* U. S., 77 Illinois, App. 106.

The condition in the bond of a contractor with the United States for public work, prescribed by the act of August 13, 1894, 28 Stat. L., 278, is intended to cover payments only for the visible material furnished for direct use and incorporation in the work, and of wages to the men whose services are directly employed in doing the work; and an action against the sureties on such a bond can only be maintained, under the statute, by one who has title to a claim for labor or materials so supplied. A person furnishing board and lodging to laborers employed on the work does not supply either labor or materials within the meaning of the statute. U. S. *v.* Kimpland, 93 Fed. Rep., 403.

The terms of this statute do not include the claim of a railroad for freight due on materials which are loaded and unloaded by the contractor, such charges being neither labor nor materials within the meaning and purpose of the act. U. S. *v.* Hyatt, 92 Fed. Rep., 442.

A government contractor for public work, who has given a bond conditioned that he will "make full payments to all persons supplying him with labor or materials," is not liable thereon for unpaid wages due from a subcontractor who has supplied him with materials, when he paid such contractor in full therefor. U. S. *v.* Farley et al., 91 Fed. Rep., 474.

pounds, and that each cord of wood to be so measured shall be of the standard measure of one hundred and twenty-eight cubic feet. Each load or parcel of wood or coal weighed and measured by him shall be accompanied by his certificate of the number of tons or pounds of coal and the number of cords or parts of cords of wood in each load or parcel.[1] *Act of March 2, 1895 (28 Stat. L., 808).*

Appointments of weighers, etc., to be certified to accounting officer. Sec. 2, *ibid.* Sec. 3712, R. S.

1579. The proper accounting officer of the Treasury shall be furnished with a copy of the appointment of each inspector, weigher, and measurer appointed under the preceding section. *Sec. 2, ibid.*

No payments for fuel, etc., without certificate. *Ibid.* Sec. 3713, R. S.

1580. It shall not be lawful for any accounting officer to pass or allow to the credit of any disbursing officer in the District of Columbia any money paid by him for purchase of anthracite or bituminous coal or for wood unless the voucher therefor is accompanied by a certificate of the proper inspector, weigher, and measurer that the quantity paid for has been determined by such officer. *Ibid.*

---

[1] For requirements of regulations in respect to open-market purchases see paragraphs 645–649, A. R., 1901.

CHAPTER XXXIII.

THE PUBLIC LANDS—MILITARY RESERVATIONS—MILITARY POSTS.

Par.
1581–1583. The public lands.
1584–1592. Homesteads.
1593–1599. Acquisitions of land by the United States.
1600–1601. Jurisdiction over reservations.
1602–1614. Protection of reservations.
1615–1619. Disposition of lands. Rights of way.
1620. Leases of public property.
1621–1630. Military posts.

THE PUBLIC LANDS.[1]

Par.
1581. Lands subject to preemption and homestead entry.
1582. Lands not subject to entry.
1583. The same, military reservations.

1581. All lands belonging to the United States, to which the Indian title has been or may hereafter be extinguished, shall be subject to the right of preemption, under the conditions, restrictions, and stipulations provided by law.

Apr. 21, 1876, c. 72, v. 19, p. 35, Shepley et al. *v.* Cowen et al., 91 U. S., 330.

Lands subject to preemption.
June 2, 1862, c. 94, s. 1, v. 12, p. 413; Feb. 11, 1874. c. 25, v. 18, p. 18; Feb. 23, 1875, c. 99, v. 18, p. 334, **Sec. 2257, R.S.**

---

[1] Lands acquired by the United States for public uses, by purchase with the consent of the legislatures of the States, or acquired by an exercise of the right of eminent domain are not "public lands," that term applying only to such lands as are subject to sale or other disposition under general laws. Newhall *v.* Sanger, 92 U. S., 761; V Opin. Att. Gen., 578. Power over such lands is vested in Congress by the Constitution, without limitation, and is the foundation upon which the Territorial governments rest. U. S. *v.* Gratiot, 14 Pet., 526. The power of Congress over the public land and the effect of its grants can not be interferred with by State legislation. Gibson *v.* Chouteau, 13 Wall., 92.

Congress has the sole power to declare the dignity and effect of titles emanating from the United States, and the whole legislation of the Federal Government, in reference to the public lands, declares the patent the superior and conclusive evidence of legal title. Until its issuance the fee is in the Government; by the patent, it passes to the grantee, and he is entitled to recover the possession in ejectment. Bagnell *v.* Broderick, 13 Peters, 436, 450; Wilcox *v.* Jackson, ibid., 498, 516; Langdon *v.* Sherwood, 124 U. S., 74, 83; Hussman *v.* Dunham, 165 U. S., 144; Carter *v.* Ruddy, 166 U. S., 493; Kirwan *v.* Murphy, 83 Fed. Rep., 275.

There is no way for titles to land to be divested out of the United States, except in strict pursuance of some law of the United States, and, as no statute of limitations runs against the United States, occupancy and possession alone, even for a great length of time, can not ripen into title as against the United States. Drew *v.* Valentine, 18 Fed. Rep., 712.

In the administration of the public lands the decisions of the Land Department upon questions of fact are conclusive, and only questions of law can be reviewed by the courts. Catholic Bishop of Nesqually *v.* U. S. 158 U. S., 155.

Lands not subject to preemption.

Sept. 4, 1841, c. 16, s. 10, v. 5, p. 455; Jan. 12, 1877, c. 18, v. 19, p. 221. Wilcox *v.* Jackson, 13 Pet., 498; Josephs *v.* U. S., 1 N. and H., 197; Turner *v.* American Baptist Union, 5 McLean, 344; U. S. *v.* Railroad Bridge Company, 6 McLean, 517; Russell *v.* Beebe, Hemps., 704.

Sec. 2258, R.S.

1582. The following classes of lands, unless otherwise specially provided for by law, shall not be subject to the rights of preemption, to wit:

First. Lands included in any reservation by any treaty, law, or proclamation of the President, for any purpose.[1]

Second. Lands included within the limits of any incorporated town, or selected as the site of a city or town.

Third. Lands actually settled and occupied for purposes of trade and business, and not for agriculture.

Fourth. Lands on which are situated any known salines or mines.

Military or other reservations, etc.

Mar. 2, 1867, c. 177, v. 14, p. 541; Feb. 28, 1877, c. 74, v. 19, p. 264.

Sec. 2393, R.S.

1583. The provisions of this chapter[2] shall not apply to military or other reservations[3] heretofore made by the United States, nor to reservations for light-houses, custom-houses, mints, or such other public purposes as the inter-

---

[1] Under this head fall military and Indian reservations, the Yellowstone National Park, and the forest reservations in California set apart by the President under the authority conferred by section 24 of the act of March 3, 1891. See the chapter entitled NATIONAL PARKS.

[2] Chapter 8, Revised Statutes, relating to the reservation and survey of town sites on the public lands. See also the chapter entitled NATIONAL PARKS.

[3] MILITARY RESERVATIONS.

No specific statutory authority exists empowering the President to reserve public lands; but the right to reserve such lands for public uses is recognized by the courts. 14 Dec. Int. Dep., 426, 607, 628; Wolsey *v.* Chapman, 101 U. S., 755, 768; Walcott *v.* Des Moines Co., 5 Wall., 681. Such reservation may be effected by proclamation or by Executive order. 13 Dec. Int. Dep., 426. For cases in which the specific authority of law exists for the establishment of reservations, see the title *Forest Reservations*, in the chapter entitled NATIONAL PARKS.

A military reservation, being simply territory of the United States withdrawn from sale, preemption, (*a*) etc. (VII Opin. Att. Gen., 574, 757; 14 ibid., 775), the mere fact of the establishing of such a reservation can not affect the power of the State or Territorial authorities (according as it may be located in a State or Territory) to

---

[a] The Constitution (Art. IV. sec. 3, ¶ 2) has vested in Congress the exclusive power "to dispose of and make all needful rules and regulations respecting the territory" (held in U. S. *v.* Gratiot (14 Peters, 537) to mean "lands") "or other property belonging to the United States." As a consequence perhaps of the indefiniteness of this grant (see 7 Opin. Att. Gen., 574) no general enactment providing for the setting apart of land for military reservations has ever been made by Congress. In a few cases, indeed, a special authority to establish a military reserve has been conferred upon the President by statute, but the great majority of the military reservations heretofore located or now existing have been made by the President without any such specific authority whatever. But though no general authority has been directly given by Congress for the reserving of lands for military purposes, an authority for the purpose has been deemed to exist, and this authority is found in the usage of the executive department of the Government, as indirectly sanctioned by Congress in repeated preemption acts, acts relating to the survey of the public domain, appropriation acts, etc., in which lands reserved for military purposes by the President have been in general terms excepted from sale, exempted from entry, etc., or special provision has been made for the cost of improvements to be erected upon the same. In Grisar *v.* McDonald (6 Wallace, 381) the United States Supreme Court, by Field, J., observes: "From an early period in the history of the Government it has been the practice of the President to order, from time to time, as the exigencies of the public service required, parcels of land belonging to the United States to be reserved from sale and set apart for public uses." Further, "The authority of the President in this respect is recognized in numerous acts of Congress." The court then cites several statutes as containing this recognition, including the preemption acts of May 29, 1830, and September 4, 1841, and adds: "The action of the President in making the (military) reservations" (the title to which was at issue in the particular case) "was indirectly approved by the legislation of Congress in appropriating moneys for the construction of fortifications and other public works upon them." And see XII Opin. Att. Gen., 381; XIV ibid., 182; XVII ibid., 258; Wilcox *v.* Jackson, 13 Peters, 512; U. S. *v.* Hare, 4 Sawyer, 653; also U. S. *v.* R. R. Bridge Co., 6 McLean, 517;

It is, moreover, to be noted that the provision of the act of 1841, referred to by the Supreme Court, has been incorporated as a general enactment in the Revised Statutes in the chapter (chapter 4 of title 32) on preemptions, section 2258 expressly excepting from the lands of the United States, "subject to the rights of preemption," "lands included in any reservation by any treaty, law, or proclamation of the President for any purpose." And see section 2393, specifically excepting military reservations from the operation of the laws authorizing the establishing of town sites.

The "proclamation" of the President reserving lands for military purposes is usually in the form ests of the United States may require, whether held under reservations through the Land Office by title derived from the Crown of Spain or otherwise.

---

serve civil or criminal process therein, or to attach or levy upon personal property, except in so far, of course, as such service may be specially precluded or restricted by law as to military persons in general.(b) Where indeed there has been a cession of exclusive jurisdiction over the land by the State to the United States, the question whether the State authorities may still serve process within the reservation on account of liabilities incurred or crimes committed outside of its limits will depend upon the terms of the cession. Dig. Opin. J. A. Gen., par. 1699.

Land which has been set apart as a portion of an Indian reservation, under a treaty, can not be occupied as a military reservation; nor can even a military post be maintained thereon, in derogation of the terms of the treaty or against the consent of the Interior Department.(c) Ibid., par. 1701.

Held that the right to the "free and open exploration and purchase" of mineral lands, accorded to citizens, etc., by section 2319 Revised Statutes, could not authorize an entry, for the purpose of prospecting for mines, upon a military reservation once duly defined and established by the President, the mineral lands intended by the statute being clearly such as are included within the "public lands" of the United States. Ibid., par. 1703.

Mineral lands belonging to the public domain, which are reserved from sale under section 2318 of the Revised Statutes, may be reserved for military or other purposes by the President. Where such lands are included in a military reservation, they are not open to exploration and purchase under section 2319 of the Revised Statutes. It is otherwise where a right has once attached to mineral land, under the laws relating thereto, in favor of the locator of a mining claim. Here the land, during the existence of such right, is not subject to reservation by the President; and if it be subsequently reserved, the locator may nevertheless perfect his title. XVII Opin. Att. Gen., 230.

When public land subject to homestead settlement has been duly entered under the homestead law, it thenceforth ceases to be at the disposal of the Government so long as the entry of the settler subsists. Hence it can not, while such entry stands, be set apart by the President for a military reservation. Ibid., 160.

Where a part of the public domain has once been reserved by the President for military or other public purposes, and subsequently the land so reserved becomes unnecessary for such purposes, it can not be restored to the public domain without authority from Congress. Ibid., 168; XVI ibid., 123.

The President's power in the matter of military reservations is limited to the setting apart and declaring of the reservation; and, for the purpose of adding to and modifying the boundaries of the original reserved tract, a reservation may be redeclared by the Executive. But the President can not unreserve duly reserved land, either by revoking the order of reservation or otherwise. After lands have once been reserved for military purposes, the President, in the absence of authority from Congress, is not empowered to withdraw or restore them. By the authority, indeed, of the act of July 5, 1884, he may abandon a useless military reservation and turn the lands over to the Interior Department for disposition and sale. But he can not rereserve lands once turned over, they being no longer a part of the public domain, but lands in regard to which Congress has expressed a different will. Dig. Opin. J. A. G., paragraphs 1706, 1707.

Land Dec. Int. Dept., 30, 1702; 6 id., 18, 317; 13 id., 426, 607, 628; 8 Fed. Rep., 883; 12 id., 449; 92 U. S. 733; 101 id., 768; 5 Wallace 681.

---

of a military general order, issued by the Secretary of War, whose act in this, as in other administrative proceedings pertaining to the military administration, is in legal contemplation the act of the President, whom he represents. But no head of a Department or executive official inferior to the President can, of his own authority, make a reservation of public lands. The power is vested only in Congress and the President. United States *v.* Hare, 4 Sawyer, 653, 669.

In this connection may be noted the ruling of Attorney-General Bates (X Opins., 359), in opposition to that of Justice McLean, of the Supreme Court (in U. S. *v.* The Railroad Bridge Co., 6 McLean, 517), but apparently concurred in by Attorney-General Williams (XIV Opins., 246), to the effect that where a tract of land of the United States has once been legally reserved for military purposes the President is not empowered, in the absence of authority from Congress, to relinquish such reservation and restore the land reserved to the general body of the public lands.

[b] As by section 1237, Revised Statutes, exempting enlisted men from arrest for certain debts, or by the operation of the provisions of the fifty-ninth article of war as to the form to be observed in making criminal arrests of military persons.

[c] By Article VI, section 2, of the Constitution, "all treaties made under the authority of the United States" are declared to be "the supreme law of the land;" and Indian reservations "have generally been made through the exercise of the treaty-making power, and in fulfillment of treaty obligations." XIV Opin. Att. Gen., 182. That land can not be reserved or occupied for military purposes to the prejudice of a title previously vested in an individual or a corporation, see, further, IX Opin., 339; XIII ibid., 469.

HOMESTEADS.

Par.
1584. Who may enter.
1585. Procedure.
1586. Soldiers, homesteads.
1587. Deduction for military service.
1588. The same; smaller tracts.
1589. Widows and children.
Par.
1590. Service in Army, etc., equivalent to residence.
1591. Entry by agent.
1592. Absence of settler in military service.

Who may enter certain unappropriated public lands.

May 20, 1862, c. 75, s. 1, v. 12, p. 392.
Feb. 11, 1874, c. 25, v. 18, p. 15.
Mar. 13, 1874, c. 55, v. 18, p. 22.
June 22, 1874, c. 400, v. 18, p. 194.
Feb. 23, 1875, c. 99, v. 18, p. 334.
Mar. 3, 1875, c. 131, ss. 15, 16, v. 18, p. 420.
Apr. 21, 1875, c. 72, v. 19, p. 35.
Mar. 3, 1877, c. 127, v. 19, p. 405.
Sec. 2289, R. S.

1584. Every person who is the head of a family, or who has arrived at the age of twenty-one years, and is a citizen of the United States, or who has filed his declaration of intention to become such, as required by the naturalization laws, shall be entitled to enter one quarter section or a less quantity of unappropriated public lands, upon which such person may have filed a preemption claim, or which may, at the time the application is made, be subject to preemption at one dollar and twenty-five cents per acre; or eighty acres or less of such unappropriated lands, at two dollars and fifty cents per acre, to be located in a body, in conformity to the legal subdivisions of the public lands, and after the same have been surveyed. And every person owning and residing on land may, under the provisions of this section, enter other land lying contiguous to his land, which shall not, with the land so already owned and occupied, exceed in the aggregate one hundred and sixty acres.[1]

Mode of procedure.

May 20, 1862, c. 75, s. 2, v. 12, p. 392.
Mar 21., 1864, c. 38, s. 2, v. 13, p. 35.
June 21, 1866, c. 127, s. 2, v. 14, p. 67.
June 22, 1874, c. 394, v. 18, p. 192.
Mar. 3, 1875, c. 131, ss. 15, 16, v. 18, p. 420.
Sec. 2290, R. S.

1585. The person applying for the benefit of the preceding section shall, upon application to the register of the land office in which he is about to make such entry, make affidavit before the register or receiver that he is the head of a family, or is twenty-one years or more of age, or has performed service in the Army or Navy of the United States, and that such application is made for his exclusive use and benefit, and that his entry is made for the purpose of actual settlement and cultivation, and not either directly or indirectly for the use or benefit of any other person; and upon filing such affidavit with the register or receiver, on payment of five dollars when the entry is of not more than eighty acres, and on payment of ten dollars when the entry is for more that eighty acres, he shall thereupon be permitted to enter the amount of land specified.

---

[1] For other statutes respecting the acquisition of lands under the homestead laws see Title XXXII, chapters 5 to 11, inclusive, of the Revised Statutes.

Soldier's homesteads.
Mar. 1, 1901, v. 31, p. 847.
Sec. 2304, R.S.

1586. Every private soldier and officer who has served in the Army of the United States during the recent rebellion for ninety days, and who was honorably discharged and has remained loyal to the Government, including the troops mustered into the service of the United States by virtue of the third section of an act approved February thirteenth, eighteen hundred and sixty-two, and every seaman, marine, and officer who has served in the Navy of the United States or in the Marine Corps during the rebellion for ninety days, and who was honorably discharged and has remained loyal to the Government, and every private soldier and officer who has served in the Army of the United States during the Spanish war, or who has served, is serving, or shall have served in the said Army during the suppression of the insurrection in the Philippines for ninety days, and who was or shall be honorably discharged; and every seaman, marine, and officer who has served in the Navy of the United States or in the Marine Corps during the Spanish war, or who has served, is serving, or shall have served in the said forces during the suppression of the insurrection in the Philippines for ninety days, and who was or shall be honorably discharged, shall, on compliance with the provisions of this chapter, as hereinafter modified, be entitled to enter upon and receive patents for a quantity of public lands not exceeding one hundred and sixty acres, or one quarter section, to be taken in compact form, according to legal subdivisions, including the alternate reserved sections of public lands along the line of any railroad or other public work not otherwise reserved or appropriated, and other lands subject to entry under the homestead laws of the United States; but such homestead settler shall be allowed six months after locating his homestead and filing his declaratory statement within which to make his entry and commence his settlement and improvement. *Act of March 1, 1901 (31 Stat. L., 847).*

Deduction for military service.
Mar. 1, 1900, v. 31, p. 847.
Sec. 2305, R.S.

1587. The time which the homestead settler has served in the Army, Navy, or Marine Corps shall be deducted from the time heretofore required to perfect title, or if discharged on account of wounds received or disability incurred in the line of duty, then the term of enlistment shall be deducted from the time heretofore required to perfect title, without reference to the length of time he may have served; but no patent shall issue to any homestead settler who has not resided upon, improved, and cultivated his homestead for a period of at least one year after he shall have commenced his improvements: *Provided*, That in every case in which a settler on the public land of the United States under the homestead laws died while actually engaged in the Army, Navy, or Marine Corps of the United States as private soldier, officer, seaman, or marine, during the war with Spain or the Philippine insurrection, his widow, if unmarried, or in case of her death or marriage, then his minor orphan children or his or their legal representatives, may proceed forthwith to make final proof upon the land so held by the deceased soldier and settler, and that the death of such soldier while so engaged in the service of the United States shall, in the administration of the homestead laws, be construed to be equivalent to a performance of all requirements as to residence and cultivation for the full period of five years, and shall entitle his widow, if unmarried, or in case of her death or marriage, then his minor orphan children or his or their legal representatives, to make final proof upon and receive Government patent for said land; and that upon proof produced to the officers of the proper local land office by the widow, if unmarried, or in case of her death or marriage, then his minor orphan children or his or their legal representatives, that the applicant for patent is the widow, if unmarried, or in case of her death or marriage, his orphan children or his or their legal representatives, and that such soldier, sailor, or marine died while in the service of the United States as hereinbefore described, the patent for such land shall issue. *Ibid.*

Persons who have entered less than 160 acres, rights of.
June 8, 1872, c. 338, s. 2, v. 17, p. 333.
Sec. 2306, R.S.

1588. Every person entitled, under the provisions of section twenty-three hundred and four, to enter a homestead who may have heretofore entered, under the homestead laws, a quantity of land less than one hundred and sixty acres, shall be permitted to enter so much land as, when added to the quantity previously entered, shall not exceed one hundred and sixty acres.

Widow and minor children of persons entitled to homestead, etc.
June 8, 1872, c. 338, s. 3, v. 17, p. 333.
Sec. 2307, R.S.

1589. In case of the death[1] of any person who would be entitled to a homestead under the provisions of section twenty-three hundred and four, his widow, if unmarried, or in case of her death or marriage, then his minor orphan children, by a guardian duly appointed and officially accredited at the Department of the Interior, shall be entitled to all the benefits enumerated in this chapter, subject to all the provisions as to settlement and improvements therein contained; but if such person died during his term of enlistment, the whole term of his enlistment shall be deducted from the time heretofore required to perfect the title.

---

[1] Section 6 of the act of March 2, 1889 (25 Stat. L., 855), provides that the requirements of that section shall not "be construed as affecting any rights to location of soldiers' certificates heretofore issued under section 2306 of the Revised Statutes."

Actual service in the Army or Navy equivalent to residence, etc.
June 8, 1872, c. 338, s. 4, v. 17, p. 333.
Sec. 2308, R.S.

1590. Where a party at the date of his entry of a tract of land under the homestead laws, or subsequently thereto, was actually enlisted and employed in the Army or Navy of the United States, his services therein shall, in the administration of such homestead laws, be construed to be equivalent, to all intents and purposes, to a residence for the same length of time upon the tract so entered. And if his entry has been canceled by reason of his absence from such tract while in the military or naval service of the United States, and such tract has not been disposed of, his entry shall be restored; but if such tract has been disposed of, the party may enter another tract subject to entry under the homestead laws, and his right to a patent therefor may be determined by the proofs touching his residence and cultivation of the first tract and his absence therefrom in such service.

Who may enter by agent.
June 8, 1872, c. 338, s. 5, v. 17, p. 334.
Sec. 2309, R.S.

1591. Every soldier, sailor, marine, officer, or other person coming within the provisions of section twenty-three hundred and four, may, as well by an agent as in person, enter upon such homestead by filing a declaratory statement, as in preemption cases; but such claimant in person shall within the time prescribed make his actual entry, commence settlements and improvements on the same, and thereafter fulfill all the requirements of law.

Absence of settler enlisted as soldier, etc., to be equivalent to residence, etc.
June 16, 1898, v. 30, p. 473.
Sec. 2304, R.S.

1592. In every case in which a settler on the public land of the United States under the homestead laws enlists or is actually engaged in the Army, Navy, or Marine Corps of the United States as private soldier, officer, seaman, or marine, during the existing war with Spain, or during any other war in which the United States may be engaged, his services therein shall, in the administration of the homestead laws, be construed to be equivalent to all intents and purposes to residence and cultivation for the same length of time upon the tract entered or settled upon; and hereafter no contest shall be initiated on the ground of abandonment, nor allegation of abandonment sustained against any such settler, unless it shall be alleged in the preliminary affidavit or affidavits of contest, and proved at the hearing in cases hereafter initiated, that the settler's alleged absence from the land was not due to his employ-

Provisos. Discharge for disability.

ment in such service: *Provided*, That if such settler shall be discharged on account of wounds received or disability incurred in the line of duty, then the term of his enlistment shall be deducted from the required length of residence without reference to the time of actual service:

One year's residence necessary.

Provided further, That no patent shall issue to any homestead settler who has not resided upon, improved, and cultivated his homestead for a period of at least one year after he shall have commenced his improvements. *Act of June 16, 1898 (30 Stat. L., 473).*

ACQUISITION OF LANDS BY THE UNITED STATES.

Par.
1593. Examination of titles.
1594. Purchases to be authorized by law.
1595. Assent of States.
1596. Releases.
1597. Acquisition by condemnation.
1598. The same.
1599. The same; sites for fortifications.

Title to land to be purchased by the United States.
Sept. 11, 1841, Res. No. 6, v. 5, p. 468.
Sec. 355, R. S.

1593. No public money shall be expended upon any site or land purchased by the United States for the purpose of erecting thereon any armory, arsenal, fort, fortification, navy-yard, custom-house, light-house, or other public building, of any kind whatever, until the written opinion of the Attorney-General shall be had in favor of the validity of the title, nor until the consent of the legislature of the State in which the land or site may be, to such purchase, has been given. The district attorneys of the United States, upon the application of the Attorney-General, shall furnish any assistance or information in their power in relation to the titles of the public property lying within their respective districts. And the Secretaries of the Departments, upon the application of the Attorney-General, shall procure any additional evidence of title which he may deem necessary, and which may not be in the possession of the officers of the Government, and the expense of procuring it shall be paid out of the appropriations made for the contingencies of the Departments respectively.[1]

---

[1] See chapters entitled THE DEPARTMENT OF JUSTICE, CONTRACTS AND PURCHASES, THE ENGINEER CORPS, NATIONAL PARKS, and NATIONAL CEMETERIES for additional provisions respecting the acquisition of lands. "When, in an act appropriating for the purchase of additional land for a public building, the piece of ground to be purchased is particularly described, the appropriation can not be used for the purchase of another tract equally suitable for the purpose, and at a price within the sum provided, although the piece named can not be secured within the amount appropriated." 2 Compt. Dec., 77. See also section 1136, Revised Statutes (par. 1216, *post*), for provision requiring all officers of the United States having title papers of prop-

1594. No land shall be purchased on account of the United States, except under a law authorizing such purchase.[1]

Restrictions on purchases of land.
May 1, 1820, c. 52, s. 7, v. 3, p. 568.
Sec. 3736, R. S.

---

erty, purchased or about to be purchased, in their possession to furnish the same forthwith to the Attorney-General.

Joint resolution No. 21, of April 11, 1898 (30 Stat. L., 737), contains the requirement that "in case of emergency, when, in the opinion of the President, the immediate erection of any temporary fort or fortification is deemed important and urgent, such temporary fort or fortification may be constructed upon the written consent of the owner of the land upon which such work is to be placed; and the requirements of section three hundred and fifty-five of the Revised Statutes shall not be applicable in such cases."

The expense of procuring an abstract of title to land to be used as a site for a fortification is a proper charge against the appropriation made for the purchase of the site, if the abstract is needed by the United States attorney to assist him in examining the title, provided the land is to be purchased and not condemned. 111 Compt. Dig., 216.

The title to lands purchased on account of the United States is not properly assured by a certificate of "no liens," signed by the attorney who made the abstract of title. The proper person to make such a certificate is the custodian of the records of judgments and other record liens in the county in which the land is located.[a] Dig. Opin. J. A. Gen., par. 2114.

"Section 355 of the Revised Statutes prescribes that no public money shall be expended upon any site or land purchased by the United States for the purpose of erecting thereon any armory, arsenal, fort, fortification, navy-yard, custom-house, light-house, or other building, of any kind whatever, until the * * * consent of the legislature of the State in which the land or site may be, to such purchase, has been given. This section is part based on the clause of the Constitution referred to, and in part not. The consent of the State to a purchase, given in order to satisfy the requirement of this section, would invest the United States with exclusive jurisdiction, if the purchase be for one of the constitutional purposes; but the section provides for other purposes also, and as to these it would seem that a simple consent to the purchase (assuming that such consent, being for a purpose not falling under the clause of the Constitution, amounts to a cession of jurisdiction) would only carry with it so much jurisdiction as would be necessary for the purpose of the purchase. Probably this would be held to be concurrent jurisdiction. Taking into consideration the fact that States can not, under any circumstances, interfere with the instrumentalities of the Government of the United States, it may, indeed, be questioned whether, even under this view, unnecessary precautions have not been taken in regard to the acquisition of jurisdiction; and certainly it can not be presumed that a State intends to part with more of its sovereignty than is necessary. A consent to the purchase, under section 355, Revised Statutes, if the purchase be for other than one of the purposes described in the clause of the Constitution, may, therefore, be accompanied with any limitations not interfering with an instrumentality of the Government of the United States.

"The most common way of acquiring jurisdiction, however, is by the State's expressly ceding it to the United States. In such case the State may make similar limitations, and this even if the place be used by the United States for one of the purposes mentioned in the clause of the Constitution. To bring the case under the clause there must be a purchase with consent. Fort Leavenworth R. R. Co. *v.* Lowe, 114 U. S., 539; Chicago and Pacific Ry. Co. *v.* McGlinn, 114 U. S., 549; Benson *v.* U. S., 146 U. S., 331; in re Kelly, 71 Fed. Rep., 545; in re Ladd, 74 Fed. Rep., 399.)" Gen. G. N. Lieber, Sept. 28, 1897 (see Military Res., etc., Title and Jurisdiction, p. 288).

[1] In the absence of statutory authority, land can not be purchased for the United States with any more legality than land of the United States can be sold or disposed of. By a provision of an act of May 1, 1820, now contained in section 2736, Revised Statutes, it is declared that "No land shall be purchased on account of the United States except under a law authorizing such purchase." *Held* that the term "purchase" was to be understood in its legal sense, as embracing any mode of acquiring property other than by descent; (*b*) and that therefrom the Secretary of War would

---

[a] See G. O. 47 of 1881 for Attorney-General's regulations as to making deeds, proving title to lands, etc.

[b] See VII Opin. Att. Gen., 114, 121; Ex parte Hebard, 4 Dillon, 384.

Assent of States to purchases of lands. Apr. 28, 1828, c. 41, s. 2, v. 4, p. 264. Sec. 1838, R.S.

1595. The President of the United States is authorized to procure the assent of the legislature of any State within which any purchase of land has been made for the erection of forts, magazines, arsenals, dockyards, and other needful buildings without such consent having been obtained.[1]

---

not be empowered to accept a gift of land or interest in land for any use or purpose independently of statutory authority. (*a*) And similarly *held* as to the construction of the same word ("purchase") as employed in section 355, Revised Statutes, and advised that an appropriation of public money could not legally be expended for the erection of a public building upon land donated to the United States until the Attorney-General had passed the title and the legislature of the State in which the land was situated had given its consent to the grant. (*b*) Dig. Opin. J. A. Gen., 627, par. 5.

The statutory authority relied upon for the purchase of land by a head of a Department should be clear and indisputable. Thus, *held* that authority to purchase additional land for the interment of soldiers could not be derived from the general provision of the annual appropriation act, appropriating a certain sum for maintaining the existing national cemeteries. Dig. Opin. J. A. Gen., par. 2105.

A statute conferring a specific authority to purchase certain land should, in the exercise of the authority, be strictly construed. Thus, where a statute authorized the Secretary of War to purchase, for a certain stated sum, a certain described tract containing a specified number of acres, *held* that the act did not invest him with discretion to purchase a portion only of such tract. Ibid., par. 2108.

Authority to acquire land in a State, by the exercise of the right of eminent domain, whether by proceedings for condemnation in the United States circuit court or in the courts of the State, (*c*) can be vested in an executive official of the United States only by express legislation of Congress. Ibid., 2109.

The Constitution vests in Congress the exclusive power to dispose of the property of the United States, real or personal. (*d*) The Secretary of War, in the absence of authority from Congress, can not alienate land of the United States. Thus, where a company proposed to cut out and remove a part of a dam (some 140 feet) on Fox River, Wisconsin, belonging to the United States, and to substitute another, as a private improvement, below, *held* that this was a proposition for the alienation by an executive official of public property, and could not legally be entertained. Ibid., par. 2113.

In view of the prohibition of section 3736, Revised Statutes, that "no land shall be purchased on account of the United States, except under a law authorizing the same," the Secretary of War can not accept a grant by gift of land or of an easement in land without authority of special statute. [By act of April 24, 1888, he is expressly empowered to purchase, or accept donations of, land for river and harbor improvements.] And *held* that, in the absence of authority from Congress, a purchase of lots in a city cemetery, for the burial purposes of a neighboring military post, would not be legal or operative. Ibid., par. 2106.

[1] The State of North Carolina ceded to the United States, by an act of its legislature of 1794, the land of the present military reservation at Southport, N. C., the site of old Fort Johnson. A condition of the deed of cession was to the effect that a fortification should be erected on the land within three years and be maintained forever thereafter for the public service, or the land should revert to the State. The time allowed was repeatedly extended, the last extension expiring in 1818, when a fortification had been constructed if not fully completed. The fort has long since ceased to be garrisoned. In 1889 an individual citizen "entered" the site as State

---

[a] See this opinion concurred in by an opinion of the Attorney-General, in XVI Opins., 414. As statutes specially authorizing the acceptance of donations of land, note the early acts of March 20 and May 9, 1794, and, later, the acts of February 18, 1867; March 3, 1875; June 23, 1879. That authority, however, to purchase, and, *a fortiori* perhaps, to accept a gift of, the necessary land, may be implied from an appropriation act granting a sum of money for a public work requiring for its construction the occupation and use of certain land of an individual or corporation. See opinions of the Attorney-General in XV Opins., 212; XVI ibid., 119, 387. In the opinion in XVI Opins., 119, it was held that where no statutory authority whatever existed for accepting a gift of land a head of a Department would not be justified in accepting the same on the condition that Congress ratify the acceptance and in anticipation of such ratification.

[b] But under the implied authority contained in section 1838, Revised Statutes, lands required as sites for forts, arsenals, etc., or needful public buildings, may be purchased (or acquired by gift) without the consent of the State, though in the absence of such consent public money can not, in view of the provisions of section 355, legally be expended upon the building. X Opin. Att. Gen., 35; XV ibid., 212.

[c] See Kohl *v.* U. S., 1 Otto, 367.

[d] XVI Opin. Att. Gen., 477.

1596. Whenever any lands have been or shall be conveyed to individuals or officers, for the use or benefit of the United States, the President is authorized to obtain from such person a release of his interest to the United States.

Power to obtain releases.
Apr. 28, 1828, c. 41, s. 3, v. 4, p. 264.
Sec. 3752, R. S.

1597. In every case in which the Secretary of the Treasury or any other officer of the Government has been, or hereafter shall be, authorized to procure real estate for the erection of a public building or for other public uses he shall be, and hereby is, authorized to acquire the same for the United States by condemnation, under judicial process, whenever in his opinion it is necessary or advantageous to the Government to do so, and the United States circuit or district courts of the district wherein such real estate is located shall have jurisdiction of proceedings for such condemnation, and it shall be the duty of the Attorney-General of the United States, upon every application of the Secretary of the Treasury, under this act, or such other officer, to cause proceedings to be commenced for condemnation, within thirty days from the receipt of the application at the Department of Justice.[1] *Act of August 1, 1888 (25 Stat. L., 357).*

Acquisitions of lands for public uses by condemnation.
Aug. 1, 1888, v. 25, p. 357.

Jurisdiction to United States courts.

---

land. *Held* that this act was without legal authority or effect; that the condition subsequent in the deed was one of the breach of which the grantor, the State, could alone take advantage; and that, as the State had not proceeded to reenter for such breach, the United States was not ousted and could legally continue to hold the premises. (*a*) Ibid., par. 2116.

[1] The power to take private property for public uses, generally termed the right of eminent domain, belongs to every independent government. It is an incident of sovereignty and requires no constitutional recognition. The provision found in the fifth amendment to the Federal Constitution, and in the constitutions of the several States, for just compensation for property taken, is merely a limitation upon the use of the power. It is no part of the power itself, but a condition upon which the power may be exercised. U. S. *v.* Jones, 109 U. S., 513, 518; Boom Co. *v.* Patterson, 98 U. S., 106; Kohl *v.* U. S., 91 U. S., 367; Cooley Con. Lim., 526; U. S. *v.* Oregon Railway. and Nav. Co., 16 F. R., 524. In some instances the States, by virtue of their own right of eminent domain, have condemned lands for the use of the General Government, and such condemnations have been sustained by their courts, without, however, denying the right of the United States to act independently of the States. Kohl *v.* U. S., 91 U. S., 367, 373; Gilmer *v.* Lime Point, 18 Cal., 729; Burt. *v.* Merchants' Ins. Co., 106 Mass., 356; U. S. *v.* Jones, 109 U. S., 513. The estate acquired by such exercise of the right of eminent domain on the part of the United States may be a fee simple or may be in the nature of an easement. XVI Op. Att. Gen., 387. The legislature is the judge of the necessity for exercising the right in any case. Cooley Const. Law, 527. It is now well settled that whenever, in the execution of the powers granted to the United States by the Constitution, lands in any State are needed by the United States, for a fort, magazine, dockyard, light-house, custom-house, post-office, or any other public purpose, and can not be acquired by agreement with the owners, the Congress of the United States, exercising the right of eminent domain, and making just compensation to the owners, may authorize such lands to be taken, either by proceedings in the courts of the State with its consent, or by proceedings in the courts of the United States, with or without any consent or concurrent act of the State, as Congress may direct or permit. Chappell *v.* U. S., 160 U. S., 499, 509, and 510. Citing Harris *v.* Elliott, 10 Pet., 25; Kohl *v.* U. S., 91 U. S., 367; U. S. *v.* Jones, 109 U. S., 513; Fort

---

[a] See Schulenberg *v.* Harriman, 21 Wall., 44.

Procedure in condemnation. Sec. 2, *ibid.*

1598. The practice, pleadings, forms, and modes of proceeding in causes arising under the provisions of this act shall conform, as near as may be, to the practice, pleadings, forms, and proceedings existing at the time in like causes in the courts of record of the State within which such circuit or district courts are held, any rule of the court to the contrary notwithstanding. *Sec. 2, ibid.*

Sites for fortifications. Aug. 18, 1890, v. 26, p. 316.

1599. Hereafter the Secretary of War may cause proceedings to be instituted, in the name of the United States, in any court having jurisdiction of such proceedings, for the acquirement, by condemnation, of any land, or right pertaining thereto, needed for the site, location, construction, or prosecution of works for fortifications and coast defenses, such proceedings to be prosecuted in accordance with the laws relating to suits for the condemnation of property of the States wherein the proceedings may be instituted: *Provided*, That when the owner of such land, or rights pertaining thereto, shall fix a price for the same, which, in the opinion of the Secretary of War, shall be reasonable, he may purchase the same at such price without further delay: *Provided further*, That the Secretary of War is hereby authorized to accept on behalf of the United States donations of lands, or rights pertaining thereto, required for the above-mentioned purposes: *And provided further*, That nothing herein contained shall be construed to authorize an expenditure, or to involve the Government in any contract or contracts for the future payment of money, in excess of the sums appropriated therefor.[1] *Act of August 18, 1890 (26 Stat. L., 316).*

Leavenworth R. R. *v.* Lowe, 114 U. S., 525, 531, 532; Cherokee Nation *v.* Kansas Rwy., 135 U. S., 641, 656; Monongahela Navigation Co. *v.* U. S., 148 U. S., 312; Luxton *v.* North River Bridge Co., 147 U. S., 337, and 153 U. S., 525; Burt *v.* Merchants' Ins. Co., 106 Mass., 356; U. S., petitioners, 96 N. Y., 227.

[1] The manner in which the power of eminent domain of the United States shall be exercised is a matter of legislative discretion, and Congress, by the act of August 1, 1888, 25 Stat. L., 357, has vested in the United States circuit and district courts of the district in which the land is situated jurisdiction of proceedings authorized to be instituted by any public officer to condemn such land for public purposes. By the act of August 18, 1890 (26 Stat. L., 316), the Secretary of War is authorized to cause proceedings to be instituted for the condemnation of land for military purposes "in any court having jurisdiction of such proceedings." *Held*, that said acts are in pari materia, and upon an application by the Secretary of War under the latter act the Attorney-General may, at his election, cause proceedings to be instituted for the condemnation of land for military purposes in either the State or Federal courts. Chappell *v.* U. S., 81 Fed. Rep., 764. By the Constitution of the United States, the estimate of the just compensation for property taken for the public use, under the right of eminent domain, is not required to be made by a jury, but may be intrusted to commissioners appointed by a court or by the Executive, or to an inquest consisting of more or fewer men than an ordinary jury. Bauman *v.* Ross, 167 U. S., 548. Under the authority conferred by this statute the Attorney-General may, upon the request of the Secretary of War, cause proceedings to be instituted for the condemnation of land for military purposes in either the State or Federal courts. Chappell *v.* U. S., 81 Fed. Rep., 764.

JURISDICTION OVER RESERVATIONS.[1]

Jurisdiction over reservations, when exclusive.

Art. I, sec. 8, Constitution.

1600. The Congress shall have Power * * * To exercise exclusive Legislation in all Cases whatsoever, over such district (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Con-

---

[1] Lands may be acquired by the United States, within the territory of a State, in any one of three ways: (1) By purchase without the consent of the legislature of the State within which the lands are situated; (2) by purchase with such consent; (3) by an exercise of the right of eminent domain. Kohl *v.* U. S., 91 U. S., 367.

When the United States acquire lands within the limits of a State, with the consent of the legislature of the State, for the erection of forts, arsenals, dockyards, and other needful buildings, the Constitution confers upon them exclusive jurisdiction of the tract so acquired; but when they acquire such lands in any other way than by purchase with the consent of the legislature they will hold the lands subject to this qualification, that if upon them forts, arsenals, or other public buildings are erected for the uses of the General Government such buildings, with their appurtenances, as instrumentalities for the execution of its powers, will be free from any such interference and jurisdiction of the State as would destroy or impair their effective use for the purposes designed. Such is the law with reference to all instrumentalities created by the General Government. Their exemption from State control is essential to the independence and sovereign authority of the United States within the sphere of their delegated powers. But when not used as such instrumentalities the legislative power of the State will be as full and complete as over any other places within her limits. Fort Leavenworth R. R. Co. *v.* Lowe, 114 U. S., 525, 539. Where the absolute title to property remains in the United States, no matter for what purpose it is acquired or held, it is not subject to State or municipal taxation. Am. and Engl. Ency. of Law, vol. 25, p. 110, and cases cited.

The purchase of lands in a State by the General Government, with legislative consent, does not, *ipso facto*, confer upon the General Government exclusive jurisdiction, unless the purchase is for a fort or for some other purpose distinctly named in Article I, section 8, of the Constitution; and in order that exclusive jurisdiction may be acquired over land taken for any other purpose the act providing therefor and calling for the consent must unequivocally declare that exclusive jurisdiction is intended and necessary, or such necessity must be manifest from the purpose of the act. Accordingly, *held*, that the acts of Congress establishing the National Home for Disabled Volunteer Soldiers and creating a corporation authorized to take and hold lands for the purpose of such homes, containing no declaration of the necessity of exclusive jurisdiction in the General Government over such lands, do not vest such exclusive jurisdiction in the United States, upon the consent of the State being given to the acquisition of such lands. *In re* Kelly, 71 Fed. Rep., 545.

A cession to the General Government, in the act giving the consent of the State to the purchase of such land, of "jurisdiction" does not confer exclusive jurisdiction the purpose of the act not requiring it, but such jurisdiction only, concurrent with that of the State, as Congress may find necessary for the objects of the cession. Ibid.

Upon lands so ceded for the purpose of a home for disabled volunteers the criminal laws of the United States, which apply only to places within their exclusive jurisdiction, are not operative. Ibid.

A State may cede to the United States exclusive jurisdiction over a tract within its limits in a manner not provided for in the Constitution of the United States, and may prescribe conditions to the cession, if they are not inconsistent with the effective use of the property for the purpose intended. The reservation which has usually accompanied the consent of the States, that civil and criminal process of the State courts may be served in the places purchased, is not considered as interfering in any respect with the supremacy of the United States over them, but is admitted to prevent them from becoming an asylum for fugitives from justice. Fort Leavenworth R. R. Co. *v.* Lowe, 114 U. S., 525, 533. Such reservations provide only that civil and criminal process issued under the authority of the State, which must, of course, be for acts done and cognizable by the State, may be executed within the ceded lands, notwithstanding the cession. Not a word is said from which we can infer that it was intended that the State should have a right to punish for acts done within the ceded lands. Ibid., 534; United States *v.* Cornell, 2 Mason, 60; Commonwealth *v.* Clary, 8 Mass., 72; Mitchell *v.* Tibbetts, 17 Pick., 298; People *v.* Godfrey, 17 Johns (N. Y.), 225.

Residents within such ceded districts have none of the duties and obligations and gress, become the Seat of the Government of the United States, and to exercise like Authority over all places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings. *Article I, section 8, Constitution of the United States.*

---

none of the rights and privileges of citizens of the States within which such lands are situated. They are not subject to taxation; they can not exercise the right of suffrage. VI Opin. Att. Gen., 577; X ibid., 35; Sinks *v.* Reese, 19 Ohio, 306. They are not entitled to the benefit of the public schools. 1 Met. (Mass.), 580.

An act of the legislature of a State ceding to the United States the jurisdiction of the State over a tract of land used as a military reservation upon condition that such jurisdiction shall continue only so long as the United States shall own and occupy such reservation; that the State shall have the right within the reservation to serve civil process and to execute criminal process against persons charged with crime committed within the State, and that roads may be opened and kept in repair within such reservation, cedes to the United States the entire political jurisdiction of the State over the place in question, including judicial and legislative jurisdiction, except as to service of process and opening roads, and the same can not be affected or further limited without the consent of the United States by a subsequent act of the State legislature attempting to impose additional restrictions on the jurisdiction ceded. *In re* Ladd, 74 Fed. Rep., 31.

After such cession a justice of the peace acting under authority of the State has no jurisdiction over the ceded territory in matters of alleged criminal violation of the laws of the State committed on such territory. Ibid.

It is a general rule of public law, recognized and acted upon by the United States, that whenever political jurisdiction and legislative power over any territory are transferred from one nation or sovereign to another the municipal laws of the country—that is, laws which are intended for the protection of private rights—continue in force until abrogated or changed by the new government or sovereign. By the cession public property passes from one government to the other, but private property remains as before, and with it those municipal laws which are designed to secure its peaceful use and enjoyment. As a matter of course, all laws, ordinances, and regulations in conflict with the political character, institutions, and constitution of the new government are at once displaced. * * * But with respect to other laws affecting the possession, use, and transfer of property, and designed to secure good order and peace in the community and promote its health and prosperity, which are of a strictly municipal character, the rule is general that a change of government leaves them in force until by direct action of the new government they are altered or repealed. Chicago and Pacific R. R. *v.* McGlinn, 114 U. S., 542, 547; American Insurance Co. *v.* Cantor, 1 Pet., 542; Halleck Int. Law, ch. 34, sec. 14.

While after such cession the municipal laws of the State governing property and property rights continue in force in the ceded territory, except so far as in conflict with the laws and regulations of the United States applying thereto, the criminal laws of the State cease to be of force within the ceded territory, and laws regulating the sale of intoxicating liquors, requiring a license therefor, and punishing unlicensed sales cease to be operative, both as in conflict with the regulations of the United States governing military reservations and as penal in character. *In re* Ladd, 74 Fed. Rep., 31.

Such cessions are "necessarily temporary, to be exercised only so long as the places continue to be used for the public purposes for which the property was acquired, or reserved from sale." When they cease to be so used, the jurisdiction reverts to the State. Fort Leavenworth R. R. Co. *v.* Lowe, 114 U. S., 525, 542.

A lease by the United States to a city for market purposes of vacant land which was a part of land ceded by the State to the United States for the purposes of a navy-yard and naval hospital, with a provision that the United States may retain such use and jurisdiction no longer than the premises are used for such purposes, operates, at least while the lease is in force, to suspend the exclusive authority and jurisdiction of the United States over the leased land, and thereby makes it subject to the jurisdiction of State courts in an action for ouster therefrom. Palmer *v.* Barrett, 162 U. S., 399. The character and purposes of the occupation of a reservation having been officially and legally established by that branch of the Government which has control over such matters, it is not open to the courts, on a question of jurisdiction,

JURISDICTION OVER OFFENSES COMMITTED ON RESERVATIONS.

1601. When any offense is committed in any place, jurisdiction over which has been retained by the United States or ceded to it by a State, or which has been purchased with

Jurisdiction over offenses committed in ceded districts.
July 7, 1898, v. 30, p. 717.

---

to inquire what may be the actual uses to which any portion of the reserve is temporarily put. Benson *v.* U. S., 146 U. S., 331.

Over lands reserved for military or other governmental purposes in the Territories the jurisdiction of the United States is necessarily paramount. When a Territory is admitted as a State it is within the power of Congress to stipulate for the power of exclusive jurisdiction over such reservations, or to except them from the jurisdiction of the State. Failing to do this, however, the State can exercise such authority and jurisdiction over them as over similar property held by private individuals; and the United States can acquire exclusive jurisdiction only when the same has been formally ceded by the legislature of the State in which the lands are situated. Fort Leavenworth R. R. Co. *v.* Lowe, 114 U. S., 525. Lands acquired by the United States for public uses, by purchase with the consent of the States, or by an exercise of the right of eminent domain, are not public lands, that term applying only to "such lands as are subject to sale or other disposition under general laws." Newhall *v.* Sanger, 92 U. S., 761.

When an act admitting a State into the Union, or organizing a Territorial government, provides that the lands in possession of an Indian tribe shall not be a part of such State or Territory, the new government has no jurisdiction over them. Langford *v.* Monteith, 102 U. S., 145. For an example of such a reservation on the part of Congress in the admission of a State into the Union, see the act of July 10, 1890 (26 Stat. L., 222), admitting the State of Wyoming.

SUPERVISION OF RESERVATIONS.

Department commanders will supervise all military reservations within the limits of their commands, and if necessary will use force to remove trespassers. No license or permission to any civilian to use or occupy any part of a reservation will be given, except by the Secretary of War, unless he be in the employ of the Government, or in the family or service of persons there employed. (*a*) Par. 228, A. R., 1901.

The general principle of the authority to remove trespassers, their structures, and property from the land of the United States embraced in a military reservation, *held* specially applicable where the intrusion was for an injurious purpose, as where the object was to lay a sewer intended to discharge into a main sewer constructed by the United States upon and for the use of its own premises. In this instance, as the trespass was committed by the authorities of a municipality, *advised* that reasonable notice be given them to remove their property before resorting to military force for the purpose, and meantime that precautions be taken to prevent a connection between the proposed sewer and the sewers under the control of the United States. Dig. Opin. J. A. G., par. 1717.

Intruding settlers on the public lands may be removed by military force under the act of March 3, 1807 (2 Stat. L., 445). The United States have, also, all the common law and chancery remedies of individuals, under similar circumstances, for protection and redress. I Opin. Att. Gen., 471. The President may employ such military force as he may judge necessary and proper to remove persons who may intrude upon any lands ceded to the United States by any treaty made with a foreign nation, or by a cession from any individual State, and may adopt that method with respect to the lands ceded to the United States by the Creek treaty of March 4, 1832. II ibid., 575; III ibid., 255; VII ibid., 534.

Squatters and other trespassers and intruders may and should be expelled, by military force if necessary, from a military reservation. (*b*) But such persons, when they have been suffered to own and occupy buildings on a reservation, should be allowed reasonable time to remove them. If not removed after due notice, the same should be removed by the military. Material abandoned on a reservation by a trespasser, on vacating, may lawfully be utilized by the commander for completing roads, walks, etc. Squatters on United States reservations may be forced therefrom by criminal proceedings had under section 5388, Revised Statutes, or ejected by civil action. (*a*) Dig. Opin. J. A. G., par. 1713.

Where squatters have made any considerable improvements upon a reservation,

---

[a] As to the authority to remove trespassers from military reservations, see III Opin. Att. Gen., 268; XIX ibid.; 106, 476; G. O. 74, Hdqrs. of Army, 1869. That this authority is not deemed to be affected by the provision of section 15 of the act of June 18, 1878, see chapter entitled EMPLOYMENT OF MILITARY FORCE. See, also, Dig. J. A. G., par. 487; ibid. 165, par. 9.

[b] See G. O. 62 of 1869.

the consent of a State for the erection of a fort, magazine, arsenal, dockyard, or other needful building or structure, the punishment for which offense is not provided for by any law of the United States, the person committing such offense shall, upon conviction in a circuit or district court of the United States for the district in which the offense

---

and their value has been duly estimated—as by a board constituted by the department commander and presenting in its report all the evidence on the subject—an award by the Secretary of War, acquiesced in by the claimant, may be sued upon in the Court of Claims, which (in the absence of evidence of fraud or mistake) will accept such award as conclusive. (*a*) Ibid., par. 1714.

The cutting of timber on a military reservation is an offense against the United States made punishable by section 5388, Revised Statutes, as amended by the acts of June 4, 1888, and of March 3, 1875, chapter 151. So, grass cut on a reservation and removed as hay would be personal property of which the asportation would be larceny under the act of March 3, 1875, chapter 144. And persons coming upon a military reservation for the purpose of cutting wood or grass, or to plow up the soil, or commit other trespass, may be removed as intruders, and the post commander should not hesitate to resort to military force if necessary for the purpose. And he may of course prevent such trespassers from carrying off with them any property of the United States. Ibid., par. 1715.

In the absence or any statute directly or by necessary implication extending the powers of the local government of the District of Columbia over the military reservation and post at the Arsenal in Washington, *held* (May, 1879) that the health officer appointed by the Commissioners (constituting such government) would not be empowered of his own authority, and without the consent of the military commander, to enter upon such reservation and remove or abate a nuisance deemed by him to exist thereon. The effect of the legislation in regard to the government of the District is to except therefrom the public buildings and grounds of the United States, which are left to the charge of certain specified officials. Even farther removed from such government is the reservation at the Arsenal, the same being a military post commanded by the President through a military subordinate, and governed by military orders and regulations. Ibid., par. 1705.

Held, that an act of Congress granting a railroad company a right of way through "the public lands" of the United States did not authorize it to enter and construct a track upon the soil of a military reservation, the same being no part of "the public lands," (*a*) and that such entry was therefore a trespass. Ibid., par. 1700, but see par. 1619, *post*.

The right of way through several military reservations has been granted to various railroads, or other corporate bodies, by express legislation in each case.

TAXATION ON RESERVATIONS.

The authorities of a State or Territory (or, of course, of a county, town, etc.) are not empowered to tax an officer or soldier of the Army on account of his pay, or for any personal property in his possession properly required for the due exercise of his office or performance of his military duties. Officers and soldiers of the Army are instrumentalities provided by law to enable or assist the President to exercise his constitutional function of Commander in Chief and Executive of the nation. The pay and emoluments furnished them by Congress are means to make their services possible and effective, and their right to receive and enjoy the same can not be in any degree impaired or infringed upon by the authorities of a distinct and inferior sovereignty. And the same principle of exemption properly applies to their arms, equipments, horses, and other personal property required to be possessed and employed by them in the military service. (*b*) Dig. Opin. J. A. G., par. 2425.

The principle exempting from taxation the office or salary of an officer of the United States applies to officers on the retired list equally as to those on the active

---

[a] Maddux *v.* U. S., 20 Ct. Cls., 193, 199.

[b] In the leading case applicable to this subject—Dobbins *v.* Commissioners of Erie County, 16 Peters, 435—the Supreme Court of the United States, in declaring to be unconstitutional a State statute, so

was committed, be liable to and receive the same punishment as the laws of the State in which such place is situated now provide for the like offense when committed within the jurisdiction of such State, and the said courts are hereby vested with jurisdiction for such purpose; and no subsequent repeal of any such State law shall affect any such prosecution.[1] *Act of July 7, 1898* (*30 Stat. L., 717*).

---

list of the Army. Retired officers, being a part of the Army, are a part of the machinery of the Government, though a part not often called into active operation. But though a retired officer can not legally be taxed by State or municipal authorities on account of his Army pay as property or income, he is subject to be taxed for other property owned and held at his place of residence, like any other citizen. Ibid., par. 2426.

An officer or soldier of the Army, though not taxable officially, may be and often is taxable personally. He is not taxable by a State for his pay, or for the arms, instruments, uniform clothing, or other property pertaining to his military office or capacity, but as to household furniture and other personal property, not military, he is (except where stationed at a place under the exclusive jurisdiction of the United States) equally subject with other residents or inhabitants to taxation under the local law. (*a*) Ibid., par. 2428.

[1] This statute replaces section 5391 of the Revised Statutes, which provided that any offense committed in any place ceded to and under the jurisdiction of the United States shall, where not specially made punishable by any law of the United States, be visited with the same punishment as is provided for such offense by the laws "now in force" of the State within which such place is situated. This provision, originally enacted March 3, 1825, was substantially reenacted April 5, 1866. In 1832 it was ruled by the Supreme Court (*b*) that the provision of 1825 was "limited to the laws of the several States in force at the time of its enactment." And in recent cases, arising in Montana (*c*) and Colorado (*d*) it has been held that the provision in sec. 5391 did not apply to the offense because these States, with their laws, did not come into existence till subsequently to the date of the enactment of 1866. Thus the section was operative neither as to offenses committed in States which entered the Union since 1866 nor as to those committed in States where, at the date of the commission, there existed no criminal statute providing for the punishment of the particular offense. "For the reasons above set forth a remedy was applied by the enactment of the act of July 7, 1898."

---

far as it authorized the taxing of the *office* of a captain in the U. S. revenue service, held as follows: "The compensation of an officer of the United States is fixed by a law made by Congress. It is in its exclusive discretion to declare what shall be given. It exercises the discretion and fixes the amount, and confers upon the officer the right to receive it when it has been earned. Any law of a State imposing a tax upon the office, diminishing the recompense, is in conflict with the law of the United States which secures the allowance to the officer." Further: "Taxation by a State can not act upon the instruments, emoluments, and persons which the United States may use and employ as necessary and proper means to execute their sovereign powers. * * * The State governments can not lay a tax upon the constitutional means employed by the Government of the Union to execute its constitutional powers." In a later case—Society for Savings *v.* Coite, 6 Wallace, 605—the same court declares: "All subjects over which the sovereign power of a State extends are, as a general rule, proper subjects of taxation, but the power of a State to tax does not extend to those means which are employed by Congress to carry into execution the powers conferred in the Federal Constitution. Unquestionably the taxing power of the States is very comprehensive and pervading, but it is not without limits. State tax laws can not restrain the action of the National Government, nor can they abridge the operation of any law which Congress may constitutionally pass." This general doctrine is applied by Attorney-General Black, IX Opins, 477, as follows: "The authorities of a State can not impose a tax upon the salary of a Federal officer, or upon the compensation paid by the United States to any person engaged in their service." And as illustrating the principle involved, see also McCulloch *v.* Maryland, 4 Wheaton, 316; Weston *v.* Charlestown, 2 Peters, 449; Searight *v.* Stokes, 3 Howard, 151; Bank of Commerce *v.* New York, 2 Black, 620; Provident Inst. *v.* Mass., 6 Wallace, 611; The Banks *v.* The Mayor, 7 id., 16; Bank *v.* Supervisors, id., 26; Railroad Co. *v.* Peniston, 18 id., 5; Carrol *v.* Perry, 4 McLean, 25; Stetson *v.* Bangor, 56 Maine, 274; Opinion of Justices, 53 N. Hamp., 634; United States *v.* Weise, 5 Pa. L. J. R., 61; West. Un. Tel. Co. *v.* Richmond, 26 Grat., 1; State *v.* Garton, 32 Ind., 1; VII Opins. At. Gen., 578; XIV Id., 199. In the late case of Railroad Company *v.* Peniston, 18 Wallace, 30, it is specified by Strong, J., that "the States may not levy taxes the *direct effect* of which shall be to hinder the exercise of any powers which belong to the National Government."

[a] Finley *v.* Philadelphia, 32 Penn., 381.

[b] U. S. *v.* Paul, 6 Peters 141.

[c] U. S: *v.* Burnaby, 51 Fed. Rep., 20.

[d] U. S. *v.* Curran, cited in Exec. Doc. No. 14., H. R., 53d Cong., 1st session.

PROTECTION OF RESERVATIONS.

Par.
1602. Cutting or injuring timber.
1603. Breaking fences, driving cattle, etc.
1604. Seizures of timber.
1605. Unlawful inclosures.
1606. Complaints.
1607. Settlements not obstructed.
1608. Penal clause.
Par.
1609. Employment of force.
1610, 1611. Institution of suits, restriction.
1612. Setting fires.
1613. The same; failure to extinguish fires.
1614. The same; disposition of fines..

Cutting or injuring trees on lands of U. S. reserved or purchased for public use.

Mar. 3, 1875, v. 18, p. 481.

1602. If any person or persons shall knowingly and unlawfully cut, or shall knowingly aid, assist, or be employed in unlawfully cutting, or shall wantonly destroy or injure, or procure to be wantonly destroyed or injured, any timber tree or any shade or ornamental tree, or any other kind of tree, standing, growing, or being upon any lands of the United States, which, in pursuance of law, have been reserved, or which have been purchased by the United States for any public use, every such person or persons so offending, on conviction thereof before any circuit or district court of the United States, shall, for every such offense, pay a fine not exceeding five hundred dollars, or shall be imprisoned not exceeding twelve months. *Act of March 3, 1875 (18 Stat. L., 481).*

Punishment.

Breaking fences, etc., inclosing lands of U. S. reserved or purchased for public use.

If any person or persons shall knowingly and unlawfully break or destroy any fence, wall, hedge, or gate inclosing any lands of the United States, which have, in pursuance of any law, been reserved or purchased by the United States for any public use, every such person so offending, on conviction, shall, for every such offense, pay a fine not exceeding two hundred dollars, or be imprisoned not exceeding six months.[1] *Sec. 2, ibid.*

Punishment. Sec. 2, *ibid.*

Breaking fences, etc., and driving cattle, etc., onto lands of U. S. reserved for public use.

1603. If any person or persons shall knowingly and unlawfully break, open, or destroy any gate, fence, hedge, or wall inclosing any lands of the United States, reserved or purchased as aforesaid, and shall drive any cattle, horses, or hogs upon the lands aforesaid for the purpose of destroying the grass or trees on the said grounds, or where they may destroy the said grass or trees, or if any such person or persons shall knowingly permit his or their cattle, horses, or hogs to enter through any of said inclosures upon the lands of the United States aforesaid, where the said cattle, horses, or hogs may or can destroy the grass or trees or other property of the United States on

Permitting cattle, etc., to enter through inclosures of such lands.

---

[1] For sections of this statute conferring powers on the Secretary of the Interior, see 23 Stat. L., p. 103.

the said land, every such person or persons so offending, on conviction, shall pay a fine not exceeding five hundred dollars, or be imprisoned not exceeding twelve months: *Provided*, That nothing in this act shall be construed to apply to unsurveyed public lands and to public lands subject to preemption and homestead laws, or to public lands subject to an act to promote the development of the mining resources of the United States, approved May tenth, eighteen hundred and seventy-two.[1] *Sec. 3, ibid.*

Punishment.

Proviso.

Sec. 3, *ibid.*

1604. If any timber cut on the public lands shall be exported from the Territories of the United States it shall be liable to seizure by United States authority wherever found. *Act of April 30, 1878 (20 Stat. L., 46).*

Seizure of timber cut on the public lands.
Apr. 30, 1878, v. 20, p. 46.

Every person who unlawfully cuts, or aids or is employed in unlawfully cutting, or wantonly destroys or procures to be wantonly destroyed, any timber standing upon the land of the United States which, in pursuance of law, may be reserved or purchased for military or other purposes, or upon any Indian reservation, or lands belonging to or occupied by any tribe of Indians under authority of the United States, shall pay a fine of not more than five hundred dollars or be imprisoned not more than twelve months, or both, in the discretion of the court.[2] *Act of June 4, 1888 (25 Stat. L., 166).*

Punishment for timber depredations.

Extended to Indian lands.
Sec. 5388, R. S.

1605. All inclosures of any public lands in any State or Territory of the United States, heretofore or to be hereafter made, erected, or constructed by any person, party, association, or corporation, to any of which land included within the inclosure the person, party, association, or corporation making or controlling the inclosure had no claim

Inclosure of public lands without title declared unlawful.
Feb. 25, 1885, v. 23, p. 321.

---

[1] The Government of the United States has, with respect to its own lands within the limits of a State, the rights of an ordinary proprietor to maintain its possession, and to prosecute trespassers; and may legislate for their protection, though such legislation may involve the exercise of police power; and may complain of, and take steps to prevent, acts of individuals in fencing in its lands, even though done for the purpose of irrigation and pasturing. Camfield *v.* U. S., 167 U. S., 518.

[2] Section 5388 of the Revised Statutes, as amended by the act of June 4, 1888, which forbids the cutting or wanton destruction of timber upon military or Indian reservations, does not apply to one who removes and uses for building purposes timber which has been cut on an Indian reservation by another person without his aid and encouragement. U. S. *v.* Konkapot, 43 Fed. Rep., 64. Persons cutting trees growing on the lands of the United States, without permission, are mere trespassers, performing an illegal act, and acquire no right, title, or interest in the wood by reason of the severance. No. Pac. R. R. Co. *v.* Lewis, 162 U. S., 366; Schulenberg *v.* Harriman, 21 Wall., 44.

The Land Department has authority to make seizures, through its officers or agents, of timber unlawfully cut on the public lands. Timber so unlawfully cut, which has been seized by duly authorized agents of the Land Department, and is in their custody, may be disposed of by that Department, and whether this be done by private sale, with or without previous advertisement, is a matter entirely discretionary therewith. XVIII Opin. Att. Gen., 434; Cotton *v.* U. S., 11 How., 229; U. S. *v.* Cook, 19 Wall., 594; Wells *v.* Nickles, 104 U. S., 447.

or color of title made or acquired in good faith, or an asserted right thereto by or under claim, made in good faith with a view to entry thereof at the proper land office under the general laws of the United States at the time any such inclosure was or shall be made, are hereby declared to be unlawful, and the maintenance, erection, construction, or control of any such inclosure is hereby forbidden and prohibited; and the assertion of a right to the exclusive use and occupancy of any part of the public lands of the United States in any State or any of the Territories of the United States, without claim, color of title, or asserted right as above specified as to inclosure, is likewise declared unlawful and hereby prohibited. *Act of February 25, 1885 (23 Stat. L., 321).*

Maintenance of inclosure forbidden.

Assertion of right without title prohibited.

United States district attorneys on complaints made to institute civil suits.

Sec. 2, *ibid.*

1606. That it shall be the duty of the district attorney of the United States for the proper district, on affidavit filed with him by any citizen of the United States that section one of this act is being violated, showing a description of the land inclosed with reasonable certainty, not necessarily by metes and bounds nor by governmental subdivisions of surveyed lands, but only so that the inclosure may be identified, and the persons guilty of the violation as nearly as may be, and by description, if the name can not on reasonable inquiry be ascertained, to institute a civil suit in the proper United States district or circuit court, or Territorial district court, in the name of the United States, and against the parties named or described who shall be in charge of or controlling the inclosure complained of as defendants; and jurisdiction is also hereby conferred on any United States district or circuit court or Territorial district court having jurisdiction over the locality where the land inclosed, or any part thereof, shall be situated, to hear and determine proceedings in equity, by writ of injunction, to restrain violations of the provisions of this act; and it shall be sufficient to give the court jurisdiction if service of original process be had in any civil proceeding on any agent or employee having charge or control of the inclosure; and any suit brought under the provisions of this section shall have precedence for hearing and trial over other cases on the civil docket of the court, and shall be tried and determined at the earliest practicable day. In any case if the inclosure shall be found to be unlawful, the court shall make the proper order, judgment, or decree for the destruction of the inclosure, in a summary way, unless the inclosure shall be removed by the defendant within five days after the order of the court. *Sec. 2, ibid.*

Jurisdiction of courts.

Such cases to have precedence.

Summary judgments.

1607. That no person, by force, threats, intimidation, or by any fencing or inclosing, or any other unlawful means, shall prevent or obstruct, or shall combine and confederate with others to prevent or obstruct, any person from peaceably entering upon or establishing a settlement or residence on any tract of public land subject to settlement or entry under the public land laws of the United States, or shall prevent or obstruct free passage or transit over or through the public lands: *Provided*, This section shall not be held to affect the right or title of persons who have gone upon, improved, or occupied said lands under the land laws of the United States, claiming title thereto, in good faith. *Sec. 3, ibid.*

Settlements and transit on and over public lands not to be obstructed.

Proviso.

1608. That any person violating any of the provisions hereof, whether as owner, part owner, agent, or who shall aid, abet, counsel, advise, or assist in any violation hereof, shall be deemed guilty of a misdemeanor, and fined in a sum not exceeding one thousand dollars and be imprisoned not exceeding one year for each offense. *Sec. 4, ibid.*

Violators of these provisions held guilty of misdemeanor.

Penalty, fine and imprisonment.

1609. That the President is hereby authorized to take such measures as shall be necessary to remove and destroy any unlawful inclosure of any of said lands, and to employ civil or military force as may be necessary for that purpose. *Sec. 5, ibid.*

President authorized to take necessary measures to remove unlawful inclosures.

1610. Where the alleged unlawful inclosure includes less than one hundred and sixty acres of land, no suit shall be brought under the provisions of this act without authority of the Secretary of the Interior. *Sec. 6, ibid.*

Institution of suits. Restriction.

1611. Nothing herein shall affect any pending suits to work their discontinuance, but as to them hereafter they shall be prosecuted and determined under the provisions of this act.[1] *Sec. 7, ibid.*

Same.

1612. Any person who shall willfully or maliciously set on fire, or cause to be set on fire, any timber, underbrush, or grass upon the public domain, or shall carelessly or negligently leave or suffer fire to burn unattended near any timber or other inflammable material, shall be deemed

Setting fires, etc.

May 5, 1900, v. 31, p. 169.

---

[1] Where persons build a fence, partly on their own land and partly on lands belonging to the Government, whether the act be technically a purpresture or simply a public nuisance, an action may be maintained in equity to compel, by mandatory injunction, the removal of the fence from the Government land. U. S. *v.* Brighton Ranch Co., 26 Fed. Rep., 218. The United States have a right to an injunction in a court of equity to prevent the inclosing of public lands, and, as long as the legal title remains in the Government, in cases where the land has been entered, it can protect those lands in the same manner, except where the party who has entered the land has given express license to build a fence on it. 25 ibid., 465.

The act of June 3, 1878 (20 Stat. L., 89), authorized the sale of certain timber in the States of California, Oregon, Nevada, and Washington, and imposed a penalty for the unlawful cutting of timber in those States.

guilty of a misdemeanor, and, upon conviction thereof in any district court of the United States having jurisdiction of the same, shall be fined in a sum not more than five thousand dollars or be imprisoned for a term of not more than two years, or both. *Act of May 5, 1900 (31 Stat. L., 169).*

Failure to extinguish fires. Sec. 2, *ibid.*

1613. Any person who shall build a fire in or near any forest, timber, or other inflammable material upon the public domain shall, before leaving said fire, totally extinguish the same. Any person failing to do so shall be deemed guilty of a misdemeanor, and, upon conviction thereof in any district court of the United States having jurisdiction of the same, shall be fined in a sum not more than five thousand dollars, or be imprisoned for a term of not more than two years, or both. *Sec. 2, ibid.*

Disposition of fines. Sec. 3, *ibid.*

1614. In all cases arising under this act the fines collected shall be paid into the public-school fund of the county in which the lands where the offense was committed are situate.[1] *Sec. 3, ibid.*

DISPOSITION OF LANDS.

Par.
1615. Congress to regulate.
1616. Sale of abandoned military reservations.
1617. The same, preference to homestead settlers.
Par.
1618. Grants to municipal corporations.
1619. Rights of way on the public lands.
1620. The same, on military reservations.

Power of disposal in Congress. Constitution, Art. IV, Sec. 3, par. 2.

1615. The Congress shall have power to dispose of, and make all needful rules and regulations respecting, the territory or other property belonging to the United States.[2] *Constitution of the United States, Art. IV, sec. 3, par. 2.*

---

[1] This enactment replaces the act of February 24, 1897 (29 Stat. L., 594), *in pari materia.* See also the title *Forest Reservations* in the chapter, *post*, entitled NATIONAL PARKS.

[2] The scope of this provision is most comprehensive, the authority conferred thereby upon the legislative branch of the Government being held to extend from the formation of a territorial government to the matter of the sale of a small amount of personalty. That neither land nor any interest in land of the United States can be sold or otherwise disposed of by the head of an Executive Department or other executive official or by a military officer, without the authority of Congress, is settled law. (*a*) Dig. Opin. J. A. G., par. 2087.

The Constitution vests in Congress the exclusive power to dispose of the property of the United States, real or personal. The Secretary of War, in the absence of authority from Congress, can not alienate land of the United States. Ibid., pars. 2087–2089.

There is no way for titles to land to be divested out of the United States except in strict pursuance of some law of the United States; and, as no statute of limitations runs against the United States, occupancy and possession alone, even for a great length

---

[a] This fundamental rule of our public law is expressed by Attorney-General Hoar (XIII Opins., 46) as follows: "I am clearly of opinion that the Secretary of War can not convey to any person any interest in land belonging to the United States, except in pursuance of an act of Congress expressly or impliedly authorizing him to do so." And see United States *v.* Nichols, 1 Paine, 646 (cited *post*); Seabury *v.* Field, McAllister, 1; United States *v.* Hare, 4 Sawyer, 653, 669.

Sale, etc., of abandoned and useless military reservations.
July 5, 1884, v. 23, p. 103–104.

1616. That whenever, in the opinion of the President of the United States, the lands, or any portion of them, included within the limits of any military reservation heretofore or hereafter declared, have become or shall become useless for military purposes, he shall cause the same, or so much thereof as he may designate, to be placed under the control of the Secretary of the Interior for disposition as

---

of time, can not ripen into title as against the United States. Drew *v.* Valentine, 18 Fed. Rep., 212; Villey *v.* Jarbeau, 35 Louisiana Ann., 542.

In the absence of such authority, the lands of the United States, whether held by original proprietorship, or acquired by purchase or gift, or by conquest, can not, even for a purely benevolent or religious purpose, be *given away* any more than they can be transferred for a valuable consideration. Nor, without such authority, can they be conveyed temporarily by *lease*, whether for a short or long period. (*a*) Dig. Opin. J. A. G., par. 2087. But for authority to lease lands not needed for the use of the War Department, see the act of July 28, 1892 (27 Stat. L., 321), par. 1620, *post.*

Nor, without authority from Congress, can an Executive Department or officer convey away any *usufructuary interest* in land of the United States. Thus it has been repeatedly held by the Judge-Advocate-General that the Secretary of War, or a military commander, was not empowered, of his own authority, to grant a right of way over a military reservation to a railroad company or other corporation, and in numerous statutory enactments such a right has been expressly given by Congress as the only authority competent for the purpose. Ibid., par. 2088.

So *held* that the Secretary of War would not be authorized to transfer a lot belonging to the United States in Washington to the Commissioners of the District of Columbia for the erection of a hospital. So *held* that neither the Secretary of War nor a department commander could grant to an individual or individuals the exclusive right to use for an indefinite period certain water power belonging to the United States, nor the exclusive right to mine the soil of a military reservation for a certain term of years, nor a similar right to make and maintain for an indefinite period ditches through a portion of such a reservation for the purpose of irrigating the lands of private parties, nor the right annually to enter upon and occupy a military reservation and cut and possess the hay crop growing thereon, (*b*) nor the right permanently or indefinitely to occupy and use a portion of a reservation for a burying ground. Ibid., par. 2088.

Disposition of buildings, etc.—The provision of the Constitution in regard to the disposition of public property applies to *personalty* equally as to realty. Thus no Executive Department or officer can be empowered, except by the authority of Congress, to dispose of personal property of the United States. (*c*) So *held* that, in the absence of such authority, a military commander could not legally dispose of temporary buildings—not "fixtures"—erected upon a military reservation. So *held* that the Secretary of War would not be authorized, in the absence of enabling legislation, to sell or negotiate the bonds or promissory notes made to the United States by certain railroad companies, in consideration of rolling stock, etc., sold and transferred to the same. And similarly *held* as to the authority of the Secretary to dispose of articles of

---

[a] See Friedman *v.* Goodwin, 1 McAllister, 148, where a lease made by the post commander at San Francisco, of a part of a "government reserve," though approved by the military governor of the then Territory, and also by the Secretary of the Interior, was held void because not authorized by Congress. The court declares the "utter impotency of any attempt by an officer of the Government to alien any land, the property of the United States, without the authority of an act of Congress;" adding that "the President, with the heads of the Departments combined," could not effect such an object. And see IV Opins. At. Gen., 480; 9 id., 476; 13 id., 46; United States *v.* Hare, 4 Sawyer, 670–671. In the last case the court say: "The Secretary of the Treasury can not execute or approve of a lease of any property belonging to the United States without special authority of law."

[b] *A fortiori* in regard to growing timber. See Spencer *v.* United States, 10 Ct. Cls., 255.

[c] The leading case on this point is United States *v.* Nichols, 1 Paine, U. S. Circ. Ct. R., 646, in which it was held that a sale or loan, by the commandant of an arsenal, of a quantity of *lead* belonging to the United States, was illegal and invalid. The court say: "The Constitution declares that 'Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.' No public property can therefore be disposed of without the authority of law, either by an express act of Congress for that purpose, or by giving the authority to some Department or subordinate agent. No law has been shown authorizing the sale of this lead; nor is any such authority to be inferred from the general power vested in any of the Departments of the Government. The power, if lodged anywhere, would seem most appropriately to belong to the War Department. But there is no such express or implied power in that Department to sell the public property put under its management." And see the same principle recognized in an opinion of the Attorney-General, in XVI Opins., 477, in which it is held that the Secretary of War was not empowered to sell *arms* to a State in the absence of authority from Congress.

hereinafter provided, and shall cause to be filed with the Secretary of the Interior a notice thereof.[1] *Act of July 5, 1884 (23 Stat. L., 103).*

Preference to homestead settlers.
Feb. 15, 1895, v. 28, p. 664.

1617. That the provisions of the act approved August twenty-third, eighteen hundred and ninety-four, * * * are hereby extended to all abandoned military reservations which were placed under the control of the Secretary of the Interior under any law in force prior to the act of July fifth, eighteen hundred and eighty-four. That the preference right of entry given to actual settlers by the terms of the act to which this is an amendment shall, so far as the lands to which the provisions of said act are extended, take effect and continue for six months from the date of this amendatory act. *Act of February 15, 1895 (28 Stat. L., 664.)*

---

inferior value, not impliedly authorized to be sold by section 1316, Revised Statutes. And *held* that the fact that certain valuable public property was perishable and liable to waste was not legally sufficient to justify the sale in the absence of statutory authority.(*a*) Ibid., par. 2090.

The principle that buildings erected on the land of another without his consent become his property does not apply to buildings erected by the United States on land occupied *jure belli* by the Army in an enemy's country; but that, on subsequently surrendering the land to the owner, the military authorities might legally remove and retain or dispose of the buildings. Ibid., par. 2097.

Temporary buildings only erected by military orders on land of the United States at a military post, to serve a temporary purpose, are in general personal property of the United States, which may be removed by the direction or authority of the Secretary of War.(*b*) But if the same be permanent structures and real estate, the authority of Congress is necessary to their removal. Ibid., par. 2098.

The United States being tenant of land leased for military purposes at Fort Davis, Tex., erected buildings thereon for the purposes of a military post. In view of the fact that the relation was that of landlord and tenant, that the buildings were erected for a purpose analogous to that of trade, and for a public use, and that in their erection there could certainly have been no intention to benefit the inheritance or add to the freehold—*held* that such buildings were to be regarded not as fixtures but as personal property, and removable by the tenant at any time before the expiration of his lease. Should the Government sell the buildings standing, the purchaser would have the same right of disposition as the United States and no more. He would therefore be obliged to remove them before the termination of the lease, unless otherwise permitted by the owner of the premises. And *held* similarly of like buildings erected at Fort Union, N. Mex., where the United States was tenant at will, the buildings not being intended as improvements, but merely for the use of the troops. Ibid., par. 2099.

Where a post commander, without authority, took possession of land of the United States for the purpose of erecting thereon a building for his personal use, and having erected it assumed to hold and dispose of it as his own property, *held* that his act was unauthorized and illegal, and that he acquired no legal estate in the building. And similarly *held* where, without authority, he permitted an enlisted man of his command to use land of the United States for the erection thereon of a dwelling and to hold and dispose of such dwelling as his own property. Ibid., par. 2100.

Wood growing on a military reservation is the property of the United States. So *held* that a contractor who cut such wood to fill a contract made by him with the United States to furnish wood to a military post could not legally be allowed to remove or dispose of the same as his own property, and *advised* that he be paid merely for the cutting. Ibid., par. 2101.

[1] See note to section 1615, p. 618.

---

[a] *Held* that the "Cavalry Tactics," a work prepared under the orders of the Secretary of War by a board of officers, was the property of the United States, and therefore could not, without the authority of Congress, be disposed of to a bookseller with a view to its publication and sale by him on his private account. Ibid.

[b] But such buildings can not be *sold* without the authority of Congress. Lear *v.* U. S., 50 Fed., 65.

1618. The president is hereby authorized by proclamation to withhold from sale and grant for public use to the municipal corporation in which the same is situated all or any portion of any abandoned military reservation not exceeding twenty acres in one place. *Act of March 3, 1893 (27 Stat. L. 593).*

Rights of way. July 26, 1866, s. 8, v, 14, p. 253. Sec. 2477, R. S.

1619. The right of way for the construction of highways over public lands is hereby granted.[1]

Secretary of War may grant certain privileges; erection of bridges, extension of roads, etc. July 5, 1884, s. 6, v. 23, p. 103.

1620. The Secretary of War shall have authority, in his discretion, to permit the extension of State, county, and Territorial roads across military reservations; to permit the landing of ferries, the erection of bridges thereon; and permit cattle, sheep or other stock animals to be driven across such reservation, whenever in his judgment the same can be done without injury to the reservation or inconvenience to the military forces stationed thereon. *Sec. 6, act of July 5, 1884 (23 Stat. L., 103).*

LEASES OF PUBLIC PROPERTY NOT REQUIRED FOR PUBLIC USE.

Secretary of War may lease public property not required for use. July 28, 1892, v. 27, p. 321.

1620. Authority is hereby given to the Secretary of War, when in his discretion it will be for the public good, to lease, for a period not exceeding five years and revocable at any time, such property of the United States under his control as may not for the time be required for public use and for the leasing of which there is no authority under existing law, and such leases shall be reported annually to Congress: *Provided*, That nothing in this act contained shall be held to apply to mineral or phosphate lands.[2] *Act of July 28, 1892 (27 Stat. L., 321).*

Mineral, etc., lands excepted.

---

[1] For other statutes authorizing the Secretary of the Interior to grant rights of way over the public lands of the United States, not included within military, Indian, or other reservations, see the acts of March 3, 1875, 18 Stat. L., 482; March 3, 1891, 26 ibid., 1101; January 21, 1895, 28 ibid., 635; May 14, 1898, 29 ibid., 120; May 11, 1898, 30 ibid., 404, and February 15, 1901, 31 ibid., 790. This last enactment confers authority upon the Secretary of the Interior to grant rights of way over lands included in certain national parks and forest reservations, but with the condition that such grants shall be made through military and Indian reservations with the approval of the chief officer of the department under whom the supervision of the reservation falls, and upon a finding by him that the same is not incompatible with the public interest.

[2] A license is an authority, revocable at pleasure, to do a particular act or series of acts upon the land of another without possessing an estate therein. Morgan *v.* U. S., 14 Ct. Cls., 319.

The Constitution (Art. IV, sec. 3, par. 2) provides that "The Congress shall have power to dispose of, and make all needful rules and regulations respecting, the territory or other property belonging to the United States." The scope of this provision is most comprehensive, the authority conferred thereby upon the legislative branch of the Government being held to extend from the formation of a Territorial government to the matter of the sale of a small amount of personalty. That neither land nor any interest in land of the United States can be sold or otherwise disposed

MILITARY POSTS.

Par.
1621. Permanent barracks.
1622. Title papers.
1623. Contracts not to exceed appropriations.
1624. Expenditures for repairs, limitation.
1625. Barracks for seacoast artillery, restriction.
Par.
1626. Post traders.
1627. Post schools.
1628. The same, bakeries.
1629. Post exchanges.
1630. Sales of liquor, etc.

Permanent barracks. Sec. 1136, R.S. **1621.** Permanent barracks or quarters and buildings and structures of a permanent nature shall not be constructed unless detailed estimates shall have been previously submitted to Congress, and approved by a special appropria-

of by the head of an Executive Department or other executive official, or by a military officer, without the authority of Congress is settled law. (*a*)

In the absence of such authority, the lands of the United States, whether held by original proprietorship or acquired by purchase or gift, or by conquest, can not, even for a purely benevolent or religious purpose, be given away, any more than they can be transferred for a valuable consideration. Nor without such authority can they be conveyed temporarily by lease, whether for a short or long term. (*b*) Dig. Opin. J. A. G., par. 2087.

Nor, without authority from Congress, can an Executive Department or officer convey away any usufructuary interest in land of the United States. Thus it has been repeatedly held by the Judge-Advocate-General that the Secretary of War (or a military commander) was not empowered, of his own authority, to grant a right of way over a military reservation to a railroad company or other corporation, and in numerous statutory enactments such a right has been expressly given by Congress as the only authority competent for the purpose.

And such rights when given can be exercised only within the terms of the grant. Thus, where by an act of Congress there was granted to a railroad company a limited and defined right of way across a military reservation (occupied by a military post), *held* that the company was authorized simply to construct a track or roadway, and was not empowered to put up depots, stock yards, cattle pens, or other erections upon the land, or to appropriate land otherwise than for the roadway. (*c*)

So *held* that the Secretary of War could not, of his own authority, grant, in consideration of the payment of toll to the United States, a right of way over a bridge belonging to the United States. So *held* that the Secretary could not legally grant to a company or individul the right to erect and maintain for an indefinite period a hotel on the military reservation at Sandy Hook. (*d*) So *held* that the Secretary would not be authorized to transfer a lot belonging to the United States at Washington to the Commissioners of the District of Columbia for the erection of a hospital. So *held* that neither the Secretary of War nor a department commander could grant to an individual or individuals the exclusive right to use for an indefinite period cer-

---

[a] This fundamental rule of our public law is expressed by Attorney-General Hoar, XIII Opins., 46, as follows: "I am clearly of opinion that the Secretary of War can not convey to any person any interest in land belonging to the United States, except in pursuance of an act of Congress expressly or impliedly authorizing him to do so." And see United States *v.* Nichols, 1 Paine, 646 (cited *post*); Seabury *v.* Field, McAllister, 1; United States *v.* Hare, 4 Sawyer, 653, 669.

[b] See Friedman *v.* Goodwin, 1 McAllister, 148, where a lease made by the post commander at San Francisco of a part of a "Government reserve," though approved by the military governor of the then Territory, and also by the Secretary of the Interior, was held void because not authorized by Congress. The court declares the "utter impotency of any attempt by an officer of the Government to alien any land, the property of the United States, without the authority of an act of Congress;" adding that "the President with the heads of the Departments combined" could not effect such an object. And see IV Opins. Att. Gen., 480; 9 ibid., 476; 13 ibid., 46; United States *v.* Hare, 4 Sawyer, 670–671. In the last case the court say: "The Secretary of the Treasury can not execute or approve of a lease of any property belonging to the United States without special authority of law."

[c] See this opinion affirmed by the Attorney-General in XIV Opins., 135.

[d] See confirmatory opinion of the Attorney-General in XVI Opins., 205. In this case there was the further objection that the State of New Jersey, in ceding to the United States jurisdiction over the premises, by deed of March 10, 1846, had expressly declared that the grant was "for military purposes," adding "and the said United States shall retain such jurisdiction so long as the said tract shall be applied to the military or public purposes of the said United States, and no longer."

tion for the same, except when constructed by the troops; and no such structures, the cost of which shall exceed twenty thousand dollars, shall be erected unless by special authority of Congress.

Title papers. Sec. 1136, R.S.

1622. It shall be the duty of all officers of the United States having any of the title papers (property purchased,

---

tain water power belonging to the United States, nor the exclusive right to mine the soil of a military reservation for a certain term of years, nor a similar right to make and maintain for an indefinite period ditches through a portion of such a reservation for the purpose of irrigating the lands of private parties, nor the right annually to enter upon and occupy a military reservation and cut and possess the hay crop growing thereon, (*a*) nor the right permanently or indefinitely to occupy and use a portion of a reservation for a burying ground. Ibid., 2088.

Held, however, that a distinction was to be observed between a grant of a usufructuary interest in land and a revocable license not involving a transfer of such an interest. (*b*) Thus *held* that the Secretary of War would be authorized to permit a telegraph company to erect posts upon a military reservation and attach to the same telegraph wires, subject to their being removed at the will of the Government, if found to interfere with the purposes for which the reservation was established. So *held* that a municipal corporation might legally be permitted by the Secretary of War to lay water pipes in the soil of the arsenal grounds at Springfield, Mass., the same being equally for the benefit of the military authorities and the citizens, and subject to removal at the will of the Government. And *held* that a post trader might legally be licensed by the Secretary of War to erect the buildings necessary for his business upon the land of the post for which he was appointed. (*c*) But *held* that the Secretary of War was not empowered to accede to the application of an individual to establish a ferry across a river within the limits of a military reservation, where what was asked was not a mere license revocable at the will of the Secretary, but a permanent franchise and grant of an exclusive usufructuary interest in the premises, including even the right to charge tolls to the United States. And similary *held* in a case of an application to be permitted to erect and maintain a permanent bridge across a river forming a boundary of a military reservation, one end of which was to be built upon the soil of the reservation, the application contemplating not a mere license revocable at the will of the Government, but a permanent right of property in the bridge, involving an easement in the land. Ibid., 2089.

The act of July 28, 1882, authorizes the Secretary of War, in his discretion, to "lease for a period not exceeding five years, and revocable at any time, such property of the United States under his control as may not for the time be required for public use," such leases to be "reported annually to Congress;" but does not prescribe as to the disposition of the moneys received as rents. Sec. 3621, Revised Statutes, provides for the disposition of public moneys coming into the possession of any person, and par. 698, Army Regulations of 1895, directs that "the face of the certificate or receipt" shall "show to what appropriation" the funds belong. *Advised* that it would be sufficient for any post quartermaster or other disbursing officer into whose hands such rents should come to note the character of the payment upon his certificate, leaving it to the War Department to report the same in the aggregate to Congress at the end of each year. Ibid., par. 2084.

From the act of July 5, 1884 (23 Stat. L., 103), it may be regarded as certain that it was the view of Congress that an explicit authority was necessary for even a transient occupation of a military reservation for other than its special purpose. The act of July 28, 1892, authorizing the Secretary of War to lease such property of the United States under his control as may not for the time be required for public use, forbids an occupation which contemplates permanency, or duration longer than five years. The Secretary of War has no power to accept a donation of property for the Government for use in perpetuity by Roman Catholics. A revocable license, without limitation as to time, by the Secretary of War to a Roman Catholic archbishop, to erect and maintain a chapel on the military reservation at West Point, transcends the statute. XXI Opin. Att. Gen., 537; ibid., 473; ibid., 47; XIX ibid., 28.

---

[a] A fortiori in regard to growing timber. See Spencer *v.* United States, 10 Ct. Cls., 255.

[b] See this distinction recognized in opinions of the Attorney-General of October 1 and November 22, 1878 (XVI Opins., 152, 205), in the former of which it was held that the Secretary of the Navy was not empowered to authorize the city of Chelsea, Mass., to continue one of its main sewers through the grounds of the United States Naval Hospital.

[c] See XIV Opin. Att. Gen., 125.

or about to be purchased, for erection of public buildings) in their possession, to furnish them forthwith to the Attorney-General.[1] No public money shall be expended until the written opinion of the Attorney-General shall be had.[2]

No contract to exceed appropriation.
July 25, 1868, c. 233, s. 3, v. 15, p. 177.
Sec. 3733, R. S.

1623. No contract shall be entered into for the erection, repair, or furnishing of any public building, or for any public improvement, which shall bind the Government to pay a larger sum of money than the amount in the Treasury appropriated for the specific purpose.[3]

Expenditures exceeding $500.
July 5, 1884, v. 23, p. 111; Feb. 27, 1893, v. 27, p. 484.

1624. That hereafter no expenditures exceeding five hundred dollars shall be made upon any building or military post,[4] or grounds about the same, without the approval of the Secretary of War for the same, upon detailed estimates by the Quartermaster's Department; and

---

[1] The act of February 27, 1877 (19 Stat. L., 242), contains a requirement "that it shall be the duty of all officers of the United States having any of the title papers (of property purchased, or about to be purchased, for the erection of public buildings) in their possession, to furnish them, forthwith, to the Attorney-General. No public money shall be expended until the written opinion of the Attorney-General shall be had."

All papers relating to the Washington Aqueduct and public buildings and grounds in the District of Columbia will be filed in the office of the Chief of Engineers. All other deeds and papers pertaining to the title or sale of, and any lease, grant, license, or easement of, upon, or over any military reservation or other lands under the jurisdiction of the War Department, will be filed in the office of the Judge-Advocate-General. When any such papers come into the possession of any bureau they shall within five days thereafter be transferred to the office of the Judge-Advocate-General. Par. 786, A. R., 1901.

[2] See paragraph 334, *ante.*

[3] The custody of a public building, in the absence of a statute, an appropriation, a regulation, or the order of the head of an Executive Department, is vested in the officer having it in his official possession. Gray *v.* U. S., 23 Ct. Cls., 323.

[4] A military station is merely synonymous with the term "military post," and means a place where troops are assembled; where military stores, animate and inanimate, are kept and distributed; where military duty is performed or military protection afforded; where something, in short, more or less closely connected with arms or war is kept or is to be done. Phisterer *v.* U. S., 12 Ct. Cls., 98, 107.

POSTS.

Permanent military posts are established under the direction of the Secretary of War, by whom their names will be designated. Par. 216, A. R., 1901.

Permanent posts will be styled "forts," and points occupied temporarily by troops, "camps." Par. 217, ibid.

The commander of a post is responsible for its safety and defense, and for the discipline, drill, and tactical instruction of his command, to which ends all other garrison duties will be made subservient. He will be responsible for the preservation and proper application of public property, for the strict enforcement of laws and regulations, and for the proper condition of quarters and defenses. He will make an inspection of his command on the last day of every month, will satisfy himself by frequent personal examination that the disbursements of all officers in charge of funds are in accordance with law and regulations and their accounts correctly stated, and will make such reports of these inspections and examinations as the department commander may direct. Par. 218, ibid.

The staff of a post commander will consist of such staff officers as are on duty at the post and such line officers as may be required for staff duties. Their official designations will be as follows: Adjutant, quartermaster, commissary, surgeon, assistant surgeon, engineer officer, ordnance officer, and signal officer. Par. 221, ibid.

the erection, construction, and repair of all buildings and other public structures in the Quartermaster's Department shall, as far as may be practicable, be made by contract, after due legal advertisement.[1] *Act of February 27, 1893 (27 Stat. L., 484).*

Limitation on cost of artillery posts.
June 6, 1900, v. 31, p. 624.

1625. For the erection of barracks and quarters for artillery in connection with the project adopted for seacoast defense, there shall not hereafter be expended at any one post more than one thousand two hundred dollars per man for each man required for one relief to man the guns at the post up to eighty-three men, the present permanent strength of a battery, enlisted and commissioned, and for each man required beyond this number six hundred dollars per man, from any appropriation made by Congress, unless special authority of Congress be granted for a greater expenditure. *Act of June 6, 1900 (31 Stat. L., 624).*

POST TRADERS.

Vacancies not to be filled.
Jan. 28, 1893, v. 27, p. 426.

1626. That where a vacancy now exists or hereafter occurs in the position of post trader at any military post it shall not be filled, and the authority to make such appointment is hereby terminated: *Provided*, That in the event of the death of a post trader his personal representative shall be allowed by the Secretary of War a reasonable time in which to close the business.[2] *Act of January 28, 1893 (27 Stat. L., 426).*

---

[1] For other restrictions in respect to the construction and repair of quarters at military posts, see the title *Barracks and Quarters* in the chapter entitled THE QUARTERMASTER'S DEPARTMENT.

Expenditures of labor, money, or material upon posts will be strictly limited to the amounts allowed by law and regulations. Par. 222, A. R., 1901.

When practicable, temporary buildings for the use of the Army will be erected by its enlisted force, and necessary repairs of public buildings at garrisoned posts not appropriated for or specially authorized will be made by the troops. Par. 223, ibid.

In case of emergency, when reference to higher authority is impracticable, department commanders may order the purchase of material and engagement of services necessary for the preservation of public buildings or property, not to exceed in amount $500 for any post, but no greater sum will be expended without the sanction of the Secretary of War. Par. 224, ibid.

When a military post located upon lands belonging to the United States is abandoned the Secretary of War has no power, in the absence of authority from Congress, to order a sale of the building, and such a sale is void. Lear *v.* U. S., 50 Fed. Rep., 65. A sale by a military officer if not authorized by the usages of war, or if of property not under a valid condemnation, is a trespass and passes no title. Bowlew *v.* Lewis, 48 Mo., 32.

[2] Section 1113 of the Revised Statutes, which authorized the Secretary of War to "permit one or more trading establishments to be maintained at any military post on the frontier not in the vicinity of any city or town," was repealed and replaced by section 3 of the act of July 24, 1876 (19 Stat. L., 100), which authorized "one trader at each military post, to be appointed by the Secretary of War upon the recommendation of the council of administration." These statutes have been replaced and rendered inoperative by the act of January 28, 1893 (27 Stat. L., 426).

POST SCHOOLS.

Post schools.
Sec. 27, July 28, 1866, v. 14, p. 336.
Sec. 1231, R. S.

1627. Schools shall be established at all posts, garrisons, and permanent camps at which troops are stationed, in which the enlisted men may be instructed in the common English branches of education, and especially in the history of the United States; and the Secretary of War may detail such officers[1] and enlisted men as may be necessary to carry out this provision. It shall be the duty of the post or garrison commander to set apart a suitable room or building for school and religious purposes.

POST BAKERIES.

Post bakeries, schools, kitchens, gardens, etc.
June 13, 1890, v. 26, p. 152.

1628. That for the current fiscal year and thereafter there may be expended from the appropriation for regular supplies the amounts required for the necessary equipments of the bakehouse to carry on post bakeries; for the necessary furniture, text-books, paper, and equipments of the post schools; for the tableware and mess furniture for kitchens and mess halls; * * * each and all for use of the enlisted men of the Army.[2] *Act of June 30, 1890* (*26 Stat. L.*, *152*).

POST EXCHANGES.

Post exchanges and post gardens.
July 16, 1892, v. 27, p. 178.

1629. That hereafter no money appropriated for the support of the Army shall be expended for post gardens or exchanges; but this proviso shall not be construed to prohibit the use, by post exchanges, of public buildings or public transportation when, in the opinion of the Quartermaster-General, not required for other purposes. *Act of July 16, 1892* (*27 Stat. L.*, *178*).

Sale of beer, wine, etc., prohibited.
Feb. 2, 1901, s. 38, v. 31, p. 758.

1630. The sale of or dealing in beer, wine, or any intoxicating liquors by any person in any post exchange or canteen or Army transport or upon any premises used for military purposes by the United States is hereby prohibited. The Secretary of War is hereby directed to carry the provisions of this section into full force and effect.[3] *Sec. 38, act of February 2, 1901* (*31 Stat. L.*, *758*).

---

[1] For statutory duties of post and regimental chaplains in respect to post schools, see the chapter entitled Post Chaplains. For regulations in regard to post schools, see paragraphs 355–362, Army Regulations of 1901. For provisions of statutes respecting text-books, supplies of paper, etc., see paragraph 1223, post.

[2] For regulations in respect to the management and administration of post bakeries, see paragraphs 335–340, Army Regulations of 1901.

[3] This section replaces the requirements of the act of June 13, 1890 (26 Stat. L., 154), and section 17 of the act of March 2, 1899 (30 ibid., 937), *in pari materia*. For orders carrying this provision into effect, see paragraph 365, Army Regulations of 1901.

CHAPTER XXXIV.

THE PUBLIC PROPERTY.

Par.
1631–1636. Acquisition and accountability.
1637–1640. Deficiency in and damage to property.
Par.
1641. Disposition of condemned property.
1642–1649. Offenses against public property.

ACQUISITION[1] AND ACCOUNTABILITY.

Par.
1631. Power to acquire property vested in Congress.
1632. Accountability of company commander.
1633. Property returns.
Par.
1634. Certificates.
1635. Methods of making returns not changed.
1636. Regulations by heads of Departments.

1631. The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.[2] *Constitution, Art. IV, sec. 3.*

Power to acquire and dispose of property vested in Congress.
Art. IV, sec. 3, Constitution.

---

[1] See also the chapter entitled CONTRACTS AND PURCHASES.

[2] See note to paragraph 1615, *ante*.

The provision of the Constitution in regard to the disposition of public property applies to personalty equally as to realty. Thus no Executive Department or officer can be empowered, except by the authority of Congress, to dispose of personal property of the United States.(*a*) So, *held* that, in the absence of such authority, a military commander could not legally dispose of temporary buildings—not "fixtures"—erected upon a military reservation. So, *held* that the Secretary of War would not be authorized, in the absence of enabling legislation, to sell or negotiate the bonds or promissory notes made to the United States by certain railroad companies, in consideration of rolling stock, etc., sold and transferred to the same. And similarly *held* as to the authority of the Secretary to dispose of articles of inferior value, not impliedly authorized to be sold by section 1316, Revised Statutes. And *held* that the fact that certain valuable public property was perishable and liable to waste was not legally sufficient to justify the sale in the absence of statutory authority. *Held* that the Cavalry Tactics, a work prepared under the orders of the Secretary of War by a board of officers, was the property of the United States, and therefore could not, without the authority of Congress, be disposed of to a bookseller with

---

a The leading case on this point is United States *v.* Nichols (1 Paine, U. S. Circ. Ct. R., 646), in which it was held that a sale or loan, by the commandant of an arsenal, of a quantity of lead belonging to the United States was illegal and invalid. The court say: "The Constitution declares that 'Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.' No public property can therefore be disposed of without the authority of law, either by an express act of Congress for that purpose or by giving the authority to some Department or subordinate agent. No law has been shown authorizing the sale of this lead, nor is any such authority to be inferred from the general power vested in any of the Departments of the Government. The power, if lodged anywhere, would seem most appropriately to belong to the War Department; but there is no such express or implied power in that Department to sell the public property put under its management." And see the same principle recognized in an opinion of the Attorney-General (in XVI Opins., 477), in which it is held that the Secretary of War was not empowered to sell arms to a State in the absence of authority from Congress.

Accountability of company commander for clothing, etc.
10 Art. War.

1632. Every officer commanding a troop, battery, or company is charged with the arms, accouterments, ammunition, clothing, or other military stores belonging to his command, and is accountable to his colonel in case of their being lost, spoiled, or damaged otherwise than by unavoidable accident, or on actual service.[1] *Tenth Article of War.*

PROPERTY ACCOUNTABILITY.

Property returns.
Certificates of loss to be forwarded to Treasury accounting officers.
Mar. 29, 1894, v. 28, p. 47.

1633. That instead of forwarding to the accounting officers of the Treasury Department returns of public property intrusted to the possession of officers or agents, the Quartermaster-General, the Commissary-General of Subsistence, the Surgeon-General, the Chief of Engineers, the Chief of Ordnance, the Chief Signal Officer, the Paymaster-General of the Navy, the Commissioner of Indian Affairs, or other like chief officers in any Department, by, through, or under whom stores, supplies, and other public property are received for distribution, or whose duty it is to receive or examine returns of such property, shall certify to the proper accounting officer of the Treasury Department, for debiting on the proper account, any charge against any officer or agent intrusted with public property, arising from any loss, accruing by his fault, to the Government as to the property so intrusted to him.[2] *Sec. 1, act of March 29, 1894 (28 Stat. L., 47).*

---

a view to its publication and sale by him on his private account. Dig. Opin. J. A. G., par. 2090.

Temporary buildings only erected by military orders on land of the United States at a military post, to serve a temporary purpose, are in general personal property of the United States which may be removed by the direction or authority of the Secretary of War.[a] But if the same be permanent structures and real estate, the authority of Congress is necessary to their removal. Ibid., par. 2098.

[1] Under existing laws and regulations there is no system of fiscal accountability to regimental commanders for property belonging to the United States. For statutory provisions respecting such accountability see the title *Property Accountability.*

[2] The effect of the above statute was to divest the Auditor of the jurisdiction theretofore possessed by him over the property accounts and transactions of officers of the Navy (and War) Department, and to relieve him of all responsibility in relation to the disposition of property intrusted to said officers, except in cases where the officer "whose duty it is to receive or examine returns of such property shall certify to the proper accounting officer of the Treasury Department (the Auditor), for debiting on the proper account any charge against any officer or agent intrusted with public property, arising from any loss, accruing by his fault, to the Government as to the property so intrusted to him."

Under this act the duty and responsibility of determining questions relating to the correct disposition or loss of property in the Marine Corps have been transferred to and vested in the proper officer of the Navy Department, and it seems clear that the Auditor will have no authority over or in relation to the property mentioned in the cash voucher evidencing the purchase of forage under consideration until he has been furnished with a certificate required by section 1 of said act.

Jurisdiction over property accounts can not be given to the Auditor by injecting

---

[a] But such buildings can not be sold without the authority of Congress. Lear *v.* U. S., 50 Fed. Rep., 65.

1634. That said certificate shall set forth the condition of such officer's or agent's property returns, that it includes all charges made up to its date and not previously certified, that he has had a reasonable opportunity to be heard and has not been relieved of responsibility; the effect of such certificate, when received, shall be the same as if the facts therein set forth had been ascertained by the accounting officers of the Treasury Department in accounting. *Sec. 2, ibid.*

Contents of certificate.
Sec. 2, *ibid.*

1635. That the manner of making property returns to or in any administrative bureau or department, or of ascertaining liability for property, under existing laws and regulations, shall not be affected by this act, except as provided in section one; but in all cases arising as to such property so intrusted the officer or agent shall have an opportunity to relieve himself from liability.[1] *Sec. 3, ibid.*

Methods of making returns, etc., not affected.
Sec. 3, *ibid.*

1636. The heads of the several Departments are hereby empowered to make and enforce regulations to carry out the provisions of this act. All laws or parts of laws inconsistent with the provisions of this act are hereby repealed.[2] *Secs. 5 and 6, ibid.*

Regulations by heads of Departments.

DEFICIENCY IN, AND DAMAGE TO, PUBLIC PROPERTY.

Par.		Par.	
1637.	Deficiencies.	1639.	Administration of oaths.
1638.	Damage to arms, etc.	1640.	Accounts of company commanders.

1637. In case of deficiency of any article of military supplies, on final settlements of the accounts of any officer chargrd with the issue of the same, the value thereof shall

Deficiencies.
May 18, 1826, c. 74, s. 3, v. 4, p. 174.
Sec. 1304, R. S.

---

papers into cash accounts tending to show what disposition has been made of the property. Such evidence may well be excluded from the cash accounts, and the responsibility for determining questions relating to property accountability be left where it belongs, where the law has placed it. II Compt. Dec., 264, 267, 268; IV ibid., 422.

In the case of Isaac W. Patrick, Indian agent at the Great Nemaha Agency, upon a suit to recover on his bond for public property alleged to have been unaccounted for, such failure to account having been shown to be due to clerical errors, it was held by the circuit court of appeals for the Eighth circuit, in March, 1896, that "a Government agent is not to be held liable for property still in the possession of the agency and which has never been lost, merely because a careless clerk, appointed by the Government itself to keep the accounts of the agent, has omitted it from the return which he is required to make." U. S. *v.* Patrick (73 Fed. Rep., 800).

The failure of an Indian agent, through clerical errors, to include in his accounts property which, in fact, remains at the agency, and which is not lost to the Government, does not entitle the United States to recover the value thereof in a suit on his bond; and he may show these facts in defense. The technical failure to account would authorize a recovery of no more than nominal damages. Ibid.

[1] Section 12 of the act of July 31, 1894 (28 Stat. L., 208), requiring certain quarterly accounts to be rendered within twenty days after the expiration of the quarter to which they relate, has no application to property returns, the rendition of which is regulated by the act of March 29, 1894. III ibid., 422.

[2] For regulations prepared and promulgated by the Secretary of War in execution of the above enactment, see paragraphs 739–807, Army Regulations of 1901.

be charged against the delinquent and deducted from his monthly pay, unless he shall show to the satisfaction of the Secretary of War, by one or more depositions setting forth the circumstances of the case, that said deficiency was not occasioned by any fault on his part. And in case of damage to any military supplies, the value of such damage shall be charged against such officer and deducted from his monthly pay, unless he shall, in like manner, show that such damage was not occasioned by any fault on his part.[1]

Damage to arms.
Feb. 8, 1815, c. 38, s. 7, v. 3, p. 204.
Sec. 1303, R.S.

1638. The cost of repairs or damages done to arms, equipments, or implements shall be deducted from the pay of an officer or soldier in whose care or use the same were when such damages occurred, if said damages were occasioned by the abuse or negligence of said officer or soldier.

Administration of oaths in accounting.
Mar. 3, 1865, c. 78, s. 25, v. 13, p. 491.
Sec. 225, R. S.

1639. The Secretary of War is authorized to detail one or more of the employees of the War Department for the purpose of administering the oaths required by law in the settlement of officers' accounts for clothing, camp and garrison equipage, quartermaster's stores, and ordnance, which oaths shall be administered without expense to the parties taking them.

Accounts of company commanders.
Feb. 27, 1877, v. 19, p. 241.
Sec. 225, R. S.

1640. In settling the accounts of the commanding officer of a company for clothing and other military supplies, the affidavit of any such officer may be received to show the loss of vouchers or company books, or any matter or circumstance tending to prove that any apparent deficiency was occasioned by unavoidable accident or lost in actual service, without any fault on his part, or that the whole or any part of such clothing and supplies had been properly and legally used and appropriated; and such affidavit may be considered as evidence to establish the facts set forth, with or without other evidence, as may seem to the Secretary of War just and proper under the circumstances of the case.[2]

---

[1] See paragraph 697, Army Regulations of 1895.

[2] Causes of damage to, and of loss and destruction of, military property are classified as follows:

(1) Unavoidable causes, being those over which the responsible officers have no control, occurring (a) in the ordinary course of service, or (b) as incident to an active campaign.

(2) Avoidable causes, being those due to carelessness, willfulness, or neglect. Par. 763, A. R., 1901.

Officers responsible for property will be charged for any damage to, or loss or destruction of the same, and the money value deducted from their monthly pay, unless they show, to the satisfaction of the Secretary of War, by their own affidavits or certificates or by one or more depositions, that the damage, loss, or destruction was occasioned by unavoidable causes, and without fault or neglect on their part. Par. 764, ibid.

The proper officers to administer oaths in the administration of the affairs of the

DISPOSITION OF DAMAGED OR UNSUITABLE PROPERTY.

Sales of stores. Mar. 3, 1825, c. 93, ss. 1, 2, v. 4, p. 127. Sec. 1241, R.S.

1641. The President may cause to be sold any military stores which, upon proper inspection or survey, appear to be damaged, or unsuitable for the public service. Such inspection or survey shall be made by officers designated by the Secretary of War, and the sales shall be made under regulations prescribed by him.[1]

Army (except when otherwise specially provided) are judge-advocates of departments, judge-advocates of courts-martial, and trial officers of summary courts, and, in the cases of boards of survey, the recorder, or, if there be no recorder, the president thereof. When none of these are within reach and available, recourse must be had to a notary public or other civil officer competent to administer oaths for general purposes. Par. 765, ibid.

If an article of public property be lost or damaged by the neglect or fault of any officer or soldier, he shall pay the value thereof, or the cost of repairs, at such rates as a board of survey may determine. Par. 766, ibid.

The amount charged against an enlisted man on the muster and pay rolls on account of loss or damage of or repairs to Government property shall not exceed the value of the article or cost of repairs; and such charge will only be made on conclusive proof, and never without an inquiry, if the soldier demand it. He will be informed at the time of signing the pay rolls that his signature will be regarded as an acknowledgment of the justice of the charge. Par. 767, ibid.

When a deserter carries away public property, or when such property is lost through his desertion, its value will be determined by a board of survey and charged against him on the next muster and pay rolls. Par. 768, ibid.

If articles of public property are embezzled, or lost or damaged through neglect, by a civilian employee, the value or damage as ascertained (and by a board of survey if necessary) shall be charged to him and set against any pay or money due him. Par. 769, ibid.

For provisions respecting boards of survey, see paragraphs 790–807, ibid.

[1] The word "unsuitable," as used in sec. 1241, Rev. Sts., evidently refers to some unfitness for use other than that caused by being "damaged." Uniform clothing, for instance, of sizes that could not be used would be unsuitable. But *held* that the meaning of the word could not properly be restricted to things of a quality inferior to that which is required for the service. A thing may be unsuitable by reason of its being of such superior quality as not to be adaptable for the purpose for which it was intended. And *held* that military stores can not properly be deemed unsuitable under this statute for the sole reason that they are in excess of the quantity required for use. Dig. Opin. J. A. G., par. 2279.

For other statutes authorizing the sale of obsolete and unsuitable property, see the chapters entitled THE ORDNANCE DEPARTMENT and THE PUBLIC LANDS. For provisions respecting the disposition of funds arising from the sale of public property or stores, see the chapters entitled THE PUBLIC MONEYS, THE STAFF DEPARTMENTS, and THE ORDNANCE AND SUBSISTENCE DEPARTMENTS.

Unserviceable public property can only be disposed of by sale according to the provisions of sections 1241, 3618, Revised Statutes. It can not be exchanged for other property not belonging to the United States. Thus, *held* that an old and useless printing press, the property of the United States, could not be disposed of by exchanging it for certain new property belonging to a regiment. Ibid., par. 2103.

Held that, in the absence of specific authority from Congress, the Secretary of War would not be empowered to sell to a State, for the use of its militia, an amount of clothing in excess of the State's quota as already appropriated. And *held* that, without such authority, he would not be empowered to exchange Government property for property owned or possessed by a State; thus, that he could not legally deliver to the State of Pennsylvania certain arms, the property of the United States, in exchange for arms formerly issued to the State for the use of its militia, and in which the State had a qualified property. Ibid., par. 2104.

Held that under section 1241, Revised Statutes, unserviceable tools and materials, which had been in use at a national cemetery, could not legally be ordered to be sold upon the mere inspection and report of their unserviceableness made by the superintendent of the cemetery, but that, as required in the section, there must be

OFFENSES AGAINST PUBLIC PROPERTY.

Par.
1642. Embezzlement, stealing, etc.
1643. Receiving stolen property.
1644. Wrongful conversion.
1645. Robbery, larceny, etc.
Par.
1646. Sale, barter, exchange, etc.
1647. Losing, spoiling arms, etc.
1648. Selling ammunition.
1649. Selling, losing, horse, arms, etc.

Embezzling, stealing, etc., from United States deemed felony; penalty. Mar. 3, 1875, v. 18, p. 479.

1642. Any person who shall embezzle, steal, or purloin any money, property, record, voucher, or valuable thing whatever, of the moneys, goods, chattels, records, or property of the United States, shall be deemed guilty of felony, and on conviction thereof before the district or circuit court of the United States in the district wherein said offense may have been committed, or into which he shall carry or have in possession of said property so embezzled, stolen, or purloined, shall be punished therefor by imprisonment at hard labor in the penitentiary not exceeding five years, or by a fine not exceeding five thousand dollars, or both, at the discretion of the court before which he shall be convicted. *Act of March 3, 1875 (18 Stat. L., 479).*

Knowingly receiving, concealing, etc., stolen, etc., property of the United States; penalty. Sec. 2, *ibid.*

1643. If any person shall receive, conceal, or aid in concealing, or have, or retain in his possession with intent to convert to his own use or gain, any money, property, record, voucher, or valuable thing whatever, of the moneys, goods, chattels, records, or property of the United States, which has theretofore been embezzled, stolen, or purloined from the United States by any other person,

---

first an inspection "by an officer (i. e., commissioned officer) designated by the Secretary of War." Ibid., par. 2281.

In view of the general authority vested in the President and Secretary of War by the provision, in regard to the sale of military stores damaged or unsuitable for the public service, of the act of March 3, 1825 (now contained in section 1241, Revised Statutes), *held* that such stores might legally be sold on credit, if such mode of disposition was deemed for the public interest. Ibid., par. 2277.

Held that an officer of the Army, duly charged with the duty of making a sale of damaged, etc., medical supplies under the authority of section 1241, Revised Statutes (by which the President is empowered to order such sales in certain cases), could not lawfully be required to take out and pay for a license as a merchant under the laws of the State in which the sale was to be made. Such a requirement would be a restriction upon the regular and legal execution of the powers of the General Government, and therefore beyond the authority of a State. Ibid., par. 2278.

Held that a noncommissioned officer, who acted as auctioneer at a public sale of condemned quartermaster stores, could not legally be paid, out of the proceeds of the sale, a commission of ten per cent, or any other commission or compensation, for his services as auctioneer. The pay and allowances of all enlisted men are fixed by law, and, in the absence of any authority in the statute providing for such sales or other statutory provision, such a compensation must necessarily be without legal sanction. But *held* that a civilian employee hired by the Quartermaster's Department, under the provision for "hire of teamsters and other employees" in the appropriation for "transportation of the Army and its supplies," whose pay is not fixed by "law or regulations," may legally be paid for services as an auctioneer at a public sale of condemned quartermaster property. Ibid., par. 2284.

knowing the same to have been so embezzled, stolen, or purloined, such person shall, on conviction before the circuit or district court of the United States in the district wherein he may have such property, be punished by a fine not exceeding five thousand dollars, or imprisonment at hard labor in the penitentiary not exceeding five years, one or both, at the discretion of the court before which he shall be convicted; and such receiver may be tried either before or after the conviction of the principal felon, but if the party has been convicted, then the judgment against him shall be conclusive evidence in the prosecution against such receiver that the property of the United States therein described has been embezzled, stolen, or purloined. *Sec. 2, ibid.*

May be tried before or after conviction of principal.

1644. And any officer connected with, or employed in, the internal-revenue service of the United States, and any assistant of such officer, who shall embezzle or wrongfully convert to his own use any money or property which may have come into his possession or under his control in the execution of such office or employment, or under color or claim of authority as such officer or assistant, whether the same shall be the money or property of the United States or of some other person or party, shall, where the offense is not otherwise punishable by some statute of the United States, be punished by a fine equal to the value of the money and property thus embezzled or converted, or by imprisonment not less than three months nor more than ten years, or by both such fine and imprisonment.[1] *Act of February 3, 1879 (20 Stat. L., 280).*

Embezzlement, wrongful conversion.
Feb. 1879, v. 20, p. 280.
Sec. 5497, R.S.

1645. Every person who robs another of any kind or description of personal property belonging to the United States, or feloniously takes and carries away the same, shall be punished by a fine of not more than five thousand dollars, or by imprisonment at hard labor not less than one nor more than ten years, or by both such fine and imprisonment.

Robbery or larceny of personal property of the United States.
2 Mar., 1867, c. 193, v. 14, p. 557.
Sec. 5456, R.S.

1646. The clothes, arms, military outfits, and accouterments furnished by the United States to any soldier shall not be sold, bartered, exchanged, pledged, loaned, or given away; and no person, not a soldier or duly authorized officer of the United States, who has possession of any such clothes, arms, military outfits, or accouterments so fur-

Sale, barter, etc., of clothes, arms, etc.
Sec. 3748, R.S.

---

[1] For embezzlement and other offenses against the public property, see the 60th Article of War and the title *Disbursing officers* in the Chapter entitled THE STAFF DEPARTMENTS.

nished, and which have been the subjects of any such barter, exchange, pledge, loan, or gift, shall have any right, title, or interest therein, but the same may be seized and taken wherever found by any officer of the United States, civil or military, and shall thereupon be delivered to any quartermaster or other officer authorized to receive the same. The possession of any such clothes, arms, military outfits, or accouterments by any person not a soldier or officer of the United States shall be presumptive evidence of such a sale, barter, exchange, pledge, loan, or gift.[1]

Losing, spoiling, etc., military stores. **15 Art. of War.**

1647. Any officer who, willfully or through neglect, suffers to be lost, spoiled, or damaged any military stores belonging to the United States, shall make good the loss or damage, and be dismissed from the service. *Fifteenth Article of War.*

Selling ammunition. **16 Art. of War.**

1648. Any enlisted man who sells or willfully or through neglect wastes the ammunition delivered out to him shall be punished as a court-martial may direct. *Sixteenth Article of War.*

Selling, etc., horse, arms, etc. **17 Art. of War.**

1649. Any soldier who sells or through neglect loses or spoils his horse, arms, clothing, or accouterments shall be punished as a court-martial may adjudge, subject to such limitation as may be prescribed by the President by virtue of the power vested in him. *Seventeenth Article of War. Act July 27, 1892 (27 Stat. L., 277).*

---

[1] See also section 1242, Revised Statutes.

Held, that the provisions of section 23 of the act of March 3, 1863, prohibiting the sale, etc., of their arms, etc., by soldiers, and declaring that no right of property or possession should be acquired thereby, etc., were not limited in their operation to the period of the war, but were still in force, (*a*) and that an officer of the Army would therefore be authorized to seize arms, etc., disposed of contrary to such prohibition, whenever and wherever found. But inasmuch as there have been sundry authorized sales of arms and other ordnance stores since the end of the war; *Advised*, that officers, before making seizures, should assure themselves that the parties in possession have not acquired title in a legal manner. Dig. Opin. J. A. G., par. 2273. See as to method of recovery, par. 2275, ibid.

A person who illegally purchases army clothing from a soldier can not now be proceeded against for merely purchasing or receiving, under the existing law (secs. 1242 and 3748, Rev. Stat.), but if, in so purchasing, he aids a soldier to desert, he is subject to trial and punishment under section 5455, Revised Statutes. Ibid. p. 2274.

---

[a] See these provisions as now incorporated in the Revised Statutes, in sections 1242 and 3748. The further provision of the original act making punishable with fine and imprisonment persons purchasing from soldiers their arms, equipments, clothing, etc., has not been retained in the Revised Statutes.

CHAPTER XXXV.

THE MILITIA—THE MILITIA OF THE DISTRICT OF COLUMBIA—THE TERRITORIAL MILITIA.

THE MILITIA.

Par.
1650–1655. Composition and enrollment.
1656–1661. Organization.
1662–1663. Instruction and discipline.
1664–1668. Returns.
1669–1674. Active service of the militia.
1675–1678. Field organization.
1679–1680. Expenses of enrollment.
Par.
1681–1684. Pay, rations, etc.
1685–1687. Half pay, pension, etc.
1688–1690. Courts-martial, fines, etc.
1691–1706. Armament and equipment.
1707–1776. The militia of the District of Columbia.
1777–1781. The Territorial militia.

COMPOSITION AND ENROLLMENT.

Par.
1650. The militia.
1651. Who liable to enrollment.
1652. Enrollment by captains.
Par.
1653. Notice of enrollment.
1654. Arms and accouterments.
1655. Exemptions.

The militia. Second amendment to Constitution.

1650. A well regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.[1] *Constitution of the United States, second amendment.*

---

[1] The right to bear arms is not granted by the Constitution; neither is it in any manner dependent upon that instrument for its existence. The second amendment means no more than that it shall not be infringed by Congress, and has no other effect than to restrict the powers of the National Government. U. S. *v.* Cruikshank, 92 U. S., 542.

The right voluntarily to associate together as a military company or organization, or to drill or parade with arms, without and independent of an act of Congress or law of the State authorizing the same, is not an attribute of national citizenship. Military organization and military drill and parade under arms are subjects especially under the control of the government of every country. They can not be claimed as a right independent of law. Under our political system they are subject to the regulation and control of the State and Federal governments, acting in due regard to their respective prerogatives and powers. The Constitution and laws of the United States will be searched in vain for any support to the view that these rights are privileges and immunities of citizens of the United States, independent of some specific legislation on the subject. It can not be successfully questioned that the State governments, unless restrained by their own constitutions, have the power to regulate or prohibit associations and meetings of the people, except in the case of peaceable assemblies to perform the duties or exercise the privileges of citizens of the United States; and have also the power to control and regulate the organization, drilling, and parading of military bodies and associations, except when such bodies or associations are authorized by the militia laws of the United States. The exercise of this power, by the States, is necessary to the public peace, safety, and good order. To deny the power would be to deny the right of the State to disperse assemblages organized for sedition and treason, and the right to suppress armed mobs bent on riot and rapine. Presser *v.* Illinois, 116 U. S., 252, 267; U. S. *v.* Cruikshank, 92 U. S., 542; New York *v.* Miln, 11 Pet., 102, 139.

Who to be enrolled in the militia.
May 8, 1792, c. 33, s. 1, v. 1, p. 271; July 17, 1862, c. 201, s. 1, v. 12, p. 597; Mar. 2, 1867, c. 145, s. 6, v. 14, p. 423. Houston *v.* Moore, 5 Wh., 1. Sec. 1625, R.S.

1651. Every able-bodied male citizen of the respective States, resident therein, who is of the age of eighteen years, and under the age of forty-five years, shall be enrolled in the militia.

Enrollment, by whom.
May 8, 1792, c. 33, s. 1, v. 1, p. 271.
Sec. 1626, R.S.

1652. It shall be the duty of every captain or commanding officer of a company to enroll every such citizen residing within the bounds of his company, and all those who may, from time to time, arrive at the age of eighteen years, or who, being of the age of eighteen years and under the age of forty-five years, come to reside within his bounds.

Notice of enrollment.
May 8, 1792, c. 33, s. 1, v. 1, p. 271; Mar. 2, 1803, c. 15, s. 2, v. 2, p. 207.
Sec. 1627, R.S.

1653. Each captain or commanding officer shall, without delay, notify every such citizen of his enrollment, by a proper non-commissioned officer of his company, who may prove the notice. And any notice or warning to a citizen enrolled, to attend a company, battalion, or regimental muster, which is according to the laws of the State in which it is given for that purpose, shall be deemed a legal notice of his enrollment.

Arms and accouterments.
May 8, 1792, c. 33, s. 1, v. 1, p. 271; Mar. 2, 1803, c. 15, s. 2, v. 2, p. 207.
Sec. 1628, R.S.

1654. Every citizen shall, after notice of his enrollment, be constantly provided with a good musket or firelock of a bore sufficient for balls of the eighteenth part of a pound, a sufficient bayonet and belt, two spare flints, and a knapsack, a pouch with a box therein to contain not less than twenty-four cartridges, suited to the bore of his musket or firelock, each cartridge to contain a proper quantity of powder and ball; or with a good rifle, knapsack, shot-pouch and powder-horn, twenty balls suited to the bore of his rifle, and a quarter of a pound of powder; and shall appear, so armed, accoutered, and provided when called out to exercise, or into service, except that when called out on company days to exercise only he may appear without a knapsack. And all arms, ammunition, and accouterments so provided and required shall be held exempted from all suits, distresses, executions, or sales for debt or for the payment of taxes. Each commissioned officer shall be armed with a sword or hanger and spontoon.

EXEMPTIONS.

Persons exempt.
May 8, 1792, c. 33, s. 2, v. 1, p. 272; May 7, 1800, c. 46, s. 4, v. 2, p. 62; Apr. 30, 1810, c. 37, s. 33, v. 2, p. 603.
Sec. 1629, R.S.

1655. The Vice-President of the United States; the officers judicial and executive of the Government of the United States; the members of both Houses of Congress, and their respective officers; all custom-house officers with their clerks; all postmasters and persons employed in the transportation of the mail; all ferrymen employed at any ferry on post-roads; all inspectors of exports; all artificers and workmen employed in the armories and arsenals of the United States; all pilots; all mariners actually employed in the sea-service of any citizen or merchant within the United States; and all persons who now are or may hereafter be exempted by the laws of the respective States, shall be exempted from militia duty, notwithstanding their being above the age of eighteen, and under the age of forty-five years.

ORGANIZATION.

Par.
1656. Divisions and brigades.
1657. How officered.
1658. Rank of officers.
1659. Artillery and cavalry.
1660. Regimental colors.
1661. Privileges of corps.

Arrangement into divisions, brigades, etc.
May 8, 1792, c. 33, s. 3, v. 1, p. 272.
Sec. 1630, R.S.

1656. The militia of each State shall be arranged into divisions, brigades, regiments, battalions, and companies, as the legislature of the State may direct. Each brigade may consist of four regiments; each regiment of two battalions; each battalion of five companies; each company of sixty-four privates. Each division, brigade, and regiment shall be numbered at the formation thereof; and a record of such numbers shall be made in the adjutant-general's office of the State. When in the field, or in service in the State, each division, brigade, and regiment shall respectively take rank according to its number, reckoning the first or lowest number highest in rank.[1]

Militia, how officered.
May 8, 1792, c. 33, s. 3, v. 1, p. 272; Mar. 2, 1803, c. 15, s. 3, v. 2, p. 207; Apr. 18, 1814, c. 80, v. 3, p. 134; Apr. 20, 1816, c. 64, v. 3, p. 295.
Sec. 1631, R.S.

1657. The militia shall be officered by the respective States as follows: To the militia of each State, one quartermaster-general; to each division, one major-general, two aids-de-camp with the rank of major, one division inspector with the rank of lieutenant-colonel, and one division quartermaster with the rank of major; to each brigade, one brigadier-general, one brigade inspector, to serve also as brigade major with the rank of major, one quartermaster of brigade with the rank of captain, and one aid-de-camp with the rank of captain; to each regiment of two battalions, one colonel, one lieutenant-colonel, one major, and one chaplain; to only one battalion, a major, who shall command the same; to each company, one captain, one lieutenant, one ensign, four sergeants, four corporals, one drummer, and one fifer or bugler. And there shall be a regimental staff, to consist of one adjutant and one quartermaster, to rank as lieutenants, one paymaster, one surgeon, one surgeon's mate, one sergeant-major, one drum major, and one fife major.[1]

---

[1] For active service organization, see paragraphs 1675 to 1678, *post.*

Officers, how to take rank. May 8, 1792, c. 33, s. 8, v. 1, p. 273. Sec. 1638, R.S.

1658. All commissioned officers shall take rank according to the date of their commissions; and when two of the same grade bear an equal date, their rank shall be determined by lot to be drawn by them before the commanding officer of the brigade, regiment, battalion, company, or detachment.

Artillery and cavalry. May 8, 1792, c. 33, s. 4, v. 1, p. 272; Mar. 2, 1803, c. 15, s. 2, v. 2, p. 207. Sec. 1632, R.S.

1659. There shall be formed for each battalion at least one company of grenadiers, light infantry, or riflemen, and for each division at least one company of artillery and one troop of horse. For each company of artillery there shall be one captain, two lieutenants, four sergeants, four corporals, six gunners, six bombardiers, one drummer, and one fifer. The officers shall be armed with a sword or hanger, a fusee, bayonet, and belt, with a cartridge box to contain twelve cartridges; and each private shall furnish himself with all the equipments of a private in the infantry, until proper ordnance and field artillery is provided. For each troop of horse there shall be one captain, two lieutenants, one cornet, four sergeants, four corporals, one saddler, one farrier, and one trumpeter. The commissioned officers shall furnish themselves with good horses of at least fourteen hands and a half high, and shall be armed with a sword and pair of pistols, the holsters to be covered with bearskin caps. Each dragoon shall furnish himself with a serviceable horse, at least fourteen hands and a half high, a good saddle, bridle, mail pillion, and valise, holsters, and a breastplate and crupper, a pair of boots and spurs, a pair of pistols, a saber, and a cartridge box, to contain twelve cartridges for pistols. Each company of artillery and troop of horse shall be formed of volunteers from the brigade, at the discretion of the commander in chief of the State, not exceeding one company of each to a regiment, nor more in number than one-eleventh part of the infantry, and shall be uniformly clothed in regimentals, to be furnished at their own expense; the color and fashion to be determined by the brigadier commanding the brigade to which they belong.

Regimental colors. May 8, 1792, c. 33, s. 5, v. 1, p. 273. Sec. 1633, R.S.

1660. Each battalion and regiment shall be provided with the State and regimental colors by the field officers, and each company with a drum and fife, or bugle horn, by the commissioned officers of the company, in such manner as the legislature of the respective States may direct.

---

[1] The governor of the State has no power to depose an officer or interfere with the organization of the regiment to which he belongs after such regiment is accepted and mustered into the service of the United States. X Opin. Att. Gen., 279.

Privileges of certain corps.
May 8, 1792, c. 33, s. 11, v. 1, p. 274.
Sec. 1641, R.S.

1661. All corps of artillery, cavalry, and infantry, now existing in any State, which, by any law, custom, or usage thereof, have not been incorporated with the militia, or are not governed by the general regulations thereof, shall be allowed to retain their accustomed privileges, subject, nevertheless, to all other duties required by law in like manner as the other militia.

INSTRUCTION AND DISCIPLINE.

Par.
1662. System of instruction to be prescribed by Congress.

Par.
1663. Brigade inspectors; duties; reports.

System of instruction.
May 12, 1820, c. 97, s. 1, v. 3, p. 577.
Sec. 1637, R.S.

1662. The system of discipline and field exercise which is ordered to be observed in the different corps of infantry, artillery, and riflemen of the Regular Army shall also be observed in such corps, respectively, of the militia.[1]

Brigade inspector's duty.
May 8, 1792, c. 33, s. 10, v. 1, p. 273.
Sec. 1640, R. S.

1663. It shall be the duty of the brigade inspector to attend the regimental and battalion meetings of the militia composing the several brigades during the time when they are under arms, to inspect their arms, ammunition, and accouterments, to superintend their exercise and maneuvers, and introduce throughout the brigade the system of military discipline prescribed by law and such orders as they receive from the commander in chief of the State; and to make returns to the adjutant-general of the State at least once in every year of the militia of the brigade to which he belongs, reporting therein the actual condition of the arms, accouterments, and ammunition of the several corps and every other particular which, in his judgment, may relate to their government and the general advancement of good order and military discipline.

RETURNS.

Par.
1664. Adjutants-general; returns of strength.
1665. The same; arms, accouterments, etc.

Par.
1666. Returns to the President.
1667. Reports by brigade majors.
1668. Abstract of returns for Congress.

Adjutant-general in each State, his duty.

1664. There shall be appointed in each State an adjutant-general, whose duty it shall be to distribute all orders from

---

[1] There is no existing statute of the United States authorizing the President to call out the militia for drill merely. The Constitution, in empowering Congress "to provide for organizing, arming, and disciplining the militia," leaves their training to the States, and it is at least doubtful whether an act of Congress regulating the drill of the militia would be constitutional. Dig. Opin. J. A. G., par. 1733.

May 8, 1792, c. 33, s. 6, v. 1, p. 273.
Sec. 1634, R.S.

the commander in chief of the State to the several corps; to attend all musters when the commander in chief of the State reviews the militia, or any part thereof; to obey all orders from him relative to carrying into execution and perfecting the system of military discipline established by law; to furnish blank forms of returns that may be required, and to explain the principles on which they should be made; to receive from the several officers of the different corps throughout the State returns of the militia under their command; and to make proper abstracts from such returns and lay the same annually before the commander in chief of the State.

Returns.
May 8, 1792, c. 33, s. 6, v. 1, p. 273.
Sec. 1635, R.S.

1665. The several officers of the divisions, brigades, regiments, and battalions shall report, in their returns of the corps under their command, the actual condition of their arms, accouterments, and ammunition, their delinquencies, and every other particular relating to the general advancement of good order and discipline, and shall make the same in the usual manner.

Returns to the President.
Mar. 2, 1803, c. 15, s. 1, v. 2, p. 207.
Sec. 1636, R.S.

1666. It shall be the duty of the adjutant-general in each State to make return of the militia of the State, with their arms, accouterments, and ammunition, agreeably to the provisions of law, to the President of the United States, annually, on or before the first Monday in January; and it shall be the duty of the Secretary of War, from time to time, to give such directions to the adjutants-general of the militia as may, in his opinion, be necessary to produce a uniformity in such returns.

Brigade inspector's duty.
May 8, 1792, c. 33, s. 10, v. 1, p. 273.
Sec. 1640, R.S.

1667. It shall be the duty of the brigade-inspector to * * * make returns to the adjutant-general of the State, at least once in every year, of the militia of the brigade to which he belongs, reporting therein the actual condition of the arms, accouterments, and ammunition of the several corps, and every other particular which, in his judgment, may relate to their government and the general advancement of good order and military discipline.

Abstract of returns of adjutants-general of States.
Mar. 2, 1803, c. 15, s. 1, v. 2, p. 207.
Sec. 232, R. S.

1668. The Secretary of War shall lay before Congress, on or before the first Monday in February of each year, an abstract of the returns of the adjutants-general of the several States of the militia thereof.

ACTIVE SERVICE OF THE MILITIA.

Par.
1669. Called forth by the President.
1670. Apportionment.
1671. Subject to Articles of War.

Par.
1672. Courts-martial, composition.
1673. Term of service.
1674. Disobedience of orders, penalty.

Orders of President in case of invasion.
Feb. 28, 1795, c. 36, s. 1, v. 1, p. 424.
Martin *v.* Mott, 12 Wh., 19; McCall's Case, 5 Phila., 259.
Sec. 1642, R. S.

1669. Whenever the United States are invaded, or are in imminent danger of invasion from any foreign nation or Indian tribe, or of rebellion against the authority of the Government of the United States, it shall be lawful for the President to call forth such number of the militia of the State or States, most convenient to the place of danger, or scene of action, as he may deem necessary to repel such invasion, or to suppress such rebellion, and to issue his orders for that purpose to such officers of the militia as he may think proper.[1]

---

[1] The President has no original authority over the militia by right of his office. He can only call them out when Congress provides for his doing so as the agent of the United States for such purpose. When the call is complied with, the militia becomes national militia, and he becomes their commander in chief. The law governing his exercise of power in calling out is found in sections 1642, 5297, 5298, and 5299, Revised Statutes. Dig. Opin. J. A. G., par. 1724.

The manner of the calling out of the militia by the President under the act of 1795 (sec. 1642, R. S.), is indicated by the Supreme Court in the leading case of Houston *v.* Moore, (*a*) where it is observed that "the President's orders may be given to the chief executive magistrate of the State, or to any militia officer he may think proper.". The call would ordinarily be addressed to the governor, who, in most of the States, is made commander in chief of the active militia of the State. A further form, indeed, of calling out the militia, viz, by a conscription, was authorized during the late war, by the act of July 17, 1862. Ibid., par. 1723.

The calling forth of the militia into the United States service is an administrative function, a ministerial act, in which the Secretary of War may issue the necessary orders as the origin of the Executive, and his act is the act of the President. Ibid., par. 1725.

The President, in calling out a force of militia, authorized the governor of a State to designate the particular militia of that State to be included in the call, and the governor thereupon designated a certain regiment, and formally accepted its service. *Held,* that in so doing he acted as the agent of the President and that his acceptance was in law an acceptance by the President, and was equivalent to a muster in of the regiment. Ibid., par. 1727.

In 1836 an Indian agent in Indiana applied for assistance, in an emergency, to a militia colonel, who furnished three companies of his regiment, which were employed and rendered faithful service for seven days in assisting to execute the laws of the United States. Upon a claim now (1893) made for compensation for such service, *held* that the same could not legally be allowed by the Secretary of War, who could have no authority to recognize, as in the United States service, militia who had not been called out by the President or by his direction; and that such claim could be entertained by Congress alone. Ibid., par. 1728.

In the exercise of its constitutional power "to provide for calling forth the militia," and "to provide for organizing" the same, etc., Congress has made no distinction between any different portions of this force, or recognized any such portion as "National Guard." The law relating to the subject, Revised Statutes, Title XVI, sections 1625, 1642, etc., contemplates but a single integral body as constituting the militia and as liable to be called out. Under the existing law, the "National Guard" of a State can not legally be called out as such. Upon a call, the governor may indeed order them out, as being organized and available, so far as they will go to make up the number of the militia required. Ibid., par. 1729.

The United States statutes take no notice of "National Guard" as such. If called

Militia, how apportioned.
July 17, 1862, c. 201, s. 1, v. 12, p. 597.
Sec. 1643, R.S.

1670. When the militia of more than one State is called into the actual service of the United States by the President, he shall apportion them among such States according to representative population.

Subject to rules of war.
Feb. 28, 1795, c. 36, s. 4, v. 1, p. 424; July 29, 1861, c. 25, s. 3, v. 12, p. 282. Martin *v.* Mott, 12 Wh., 19.
Sec. 1644, R.S.

1671. The militia, when called into the actual service of the United States for the suppression of rebellion against and resistance to the laws of the United States, shall be subject to the same rules and articles of war as the regular troops of the United States.

Courts-martial, how composeed.

1672. Courts-martial for the trial of militia shall be composed of militia officers only.[1]

Feb. 28, 1795, c. 36, s. 6, v. 1, p. 424; July 29, 1861, c. 25, s. 5, v. 12, p. 282. **Sec. 1658, R.S.**

When called forth, term of service to be specified.
July 17, 1862, c. 201, s. 1, v. 12, p. 597.
Sec. 1648, R.S.

1673. Whenever the President calls forth the militia of the States, to be employed in the service of the United States, he may specify in his call the period for which such service will be required, not exceeding nine months, and the militia so called shall be mustered in and continued to serve during the term so specified, unless sooner discharged by command of the President.

---

out, it is not as "National Guard," but as militia; and when so called forth or included in a call it must be governed by the existing laws providing for the organization, discipline, etc., of the militia. Ibid., par. 1730.

The "National Guard," so called, being merely militia, can not (where not called forth) be "supported" or "maintained" by Congress, which is authorized by the Constitution to "support" and "maintain" the Army and Navy only. So officers of the National Guard can not be commissioned by the President without a violation of the Constitution, which "reserves the appointment of militia officers to the States, respectively." Ibid., par. 1734.

The act of February 28, 1895 (1 Stat. L., 424), authorizing the President under certain circumstances to call out the militia, is constitutional, and the President is the final judge of the emergency justifying such call. This construction necessarily results from the nature of the power itself and from the manifest object contemplated by the act of Congress. The power itself is to be exercised upon sudden emergencies, upon great occasions of state, and under circumstances which may be vital to the existence of the Union. A prompt and unhesitating obedience to orders is indispensable to the complete attainment of the object. The service is a military service, and the command of a military nature; and in such case every delay and every obstacle to an efficient and immediate compliance necessarily tend to jeopard the public interests. Martin *v.* Mott, 12 Wheat., 19, 30.

Where a power is confided to the President by law the presumption is that in the exercise of that power he has pursued the law. The existence of an exigency justifying the calling out of the militia is not traversable and need not be averred. It is not necessary to set forth the orders of the President; it is sufficient to state that the call of the governor for the militia was in obedience to them. For disobedience to a call made by a governor for the militia, in pursuance of the orders of the President, a citizen is liable to be tried by a court-martial organized under the laws of the United States. Ibid., 33.

In the case of Houston *v.* Moore (5 Wheat., 1), it was decided that although a militiaman who refused to obey the orders of the President calling him into the public service was not, in the sense of the act of 1795, "employed in the service of the United States" so as to be subject to the Rules and Articles of War, yet that he was liable to be tried for the offense under the fifth section of the same act by a court-martial called under the authority of the United States.

[1] Section 1658, Revised Statutes, prescribes that "courts-martial for the trial of militia shall be composed of militia officers only." *Held* that the enactment applied also in principle to courts of inquiry convened in the militia, and that officers of the Army could not, for purposes of instruction or assistance, legally be detailed to be associated with militia officers as members of such courts. Dig. Opin. J. A. G., par. 1735.

1674. Every officer, noncommissioned officer, or private of the militia who fails to obey the orders of the President when he calls out the militia into the actual service of the United States shall forfeit of his pay a sum not exceeding one year's pay, and not less than one month's pay, to be determined and adjudged by a court-martial; and such officer shall be liable to be cashiered by a sentence of court-martial, and be incapacitated from holding a commission in the militia for a term not exceeding twelve months; and such noncommissioned officer and private shall be liable to imprisonment, by a like sentence, on failure to pay the fines adjudged against him, for one calendar month for every twenty-five dollars of such fine.

Disobedience of orders, penalty.
Feb. 28, 1795, c. 36, s. 5, v. 1, p. 424; July 29, 1861, c. 25, s. 4, v. 12, p. 282. Wise v. Withers, 2 Cr., 331; Houston v. Moore, 5 Wh., 1; Martin v. Mott, 12 Wh., 19; Meade's Case, 1 Brock., 324.
Sec. 1649, R.S.

FIELD ORGANIZATION.

Par.
1675. Organization.
1676. Infantry.

Par.
1677. Brigades, divisions, staff.
1678. Rank of officers.

1675. The militia when called into actual service shall be organized as prescribed in the two sections following.

Organization.
July 17, 1862, c. 201, s. 2, v. 12, p. 598.

1676. They shall be formed by the President into regiments of infantry, with the exception of such numbers for cavalry and artillery as he may direct, not to exceed the proportion of one company of each of those arms to every regiment of infantry, and to be organized as in the regular service.[1] Each regiment of infantry shall have one colonel, one lieutenant-colonel, one major, one adjutant (a lieutenant), one quartermaster (a lieutenant), one surgeon and two assistant surgeons, one sergeant-major, one regimental quartermaster-sergeant, one regimental commissary-sergeant, one hospital steward, and two principal musicians, and shall be composed of ten companies, each company to consist of one captain, one first lieutenant, one second lieutenant, one first sergeant, four sergeants, eight corporals, two musicians, one wagoner, and from sixty-four to eighty-two privates.

Infantry.
Sec. 1645, R. S.
July 22, 1861, c. 9, s. 2, v. 12, p. 269; July 2, 1862, c. 127, s. 3, v. 12, p. 502; July 17, 1862, c. 200, s. 5, v. 12, p. 594.
Sec. 1646, R. S.

1677. They shall be further organized into divisions of three or more brigades each,[2] and each division shall have a major-general, three aids-de-camp, and one assistant adjutant-general with the rank of major. Each brigade shall be composed of four or more regiments and shall

Brigades, divisions, staff.
July 22, 1861, c. 9, s. 3, v. 12, p. 269; July 17, 1862, c. 200, s. 6, v. 12, p. 594.
Sec. 1647, R. S.

---

[1] For the war organization of the regiment, battalion, troop, battery, and company of the several arms of the service, see the acts of April 22, 1898 (30 Stat. L., 361), April 26, 1898 (ibid., 364), and March 2, 1899 (ibid., 977).

[2] For the war organization of brigades, divisions, etc., see the acts of April 22, 1898 (30 Stat. L., 361), April 26, 1898 (ibid., 364), and March 2, 1899 (ibid., 977).

have one brigadier-general, two aids-de-camp, one assistant adjutant-general with the rank of captain, one surgeon, one assistant quartermaster, one commissary of subsistence, and sixteen musicians as a band.[1]

Officers, how to take rank.
May 8, 1792, c. 33, s. 8, v. 1, p. 273.
Sec. 1638, R. S.

1678. All commissioned officers shall take rank according to the date of their commissions, and when two of the same grade bear an equal date their rank shall be determined by lot to be drawn by them before the commanding officer of the brigade, regiment, battalion, company, or detachment.

EXPENSES OF ENROLLMENT.

Par.
1679. Travel allowance.
Par.
1680. Expenses of march to rendezvous.

Traveling allowance.
Mar. 19, 1836, c. 44, s. 3, v. 5, p. 7.
Sec. 1652, R.S.

1679. The officers, noncommissioned officers, musicians, artificers, and privates shall be entitled to one day's pay, subsistence, and allowances for every twenty miles' travel from their places of residence to the place of general rendezvous, and from the place of discharge back to their residence.

Expenses of march to rendezvous.
Feb. 28, 1795, c. 36, v. 1, p. 424; Apr. 20, 1818, c. 84, v. 3, p. 444.
Sec. 1654, R.S.

1680. The expenses incurred by marching the militia of any State or Territory to their places of rendezvous, in pursuance of a requisition of the President, or of a call made by the authority of any State or Territory and approved by him, shall be adjusted and paid in like manner as the expenses incurred after their arrival at such places of rendezvous, on the requisition of the President; but this provision does not authorize any species of expenditure, previous to arriving at the place of rendezvous, which is not provided by existing laws to be paid for after their arrival at such places of rendezvous.[2]

---

[1] For provisions respecting general staff officers of the militia and volunteer forces in time of war, see the acts of April 22, 1898 (30 Stat. L., 361); April 26, 1898 (ibid., 364); May 18, 1898 (ibid., 417); June 29, 1898 (ibid., 417); joint resolution No. 57, July 8, 1898 (ibid., 752), and the act of March 2, 1899 (ibid., 752).

Where militia are called out and mustered into actual service, the staff officers of their commanding general can not be considered as in any sense appointed by the Secretary of War or commissioned by the President. Nor are they given the corresponding rank of staff officers of the Regular Army, but their rank remains the same as it was before in the militia under the State laws. Dig. Opin. J. A. G., par. 1736.

It is not essential for a militia organization that there should be a formal muster in to bring it into the actual service of the United States. The provision of the act of 1862 relating to the muster in of militia is directory only. Ibid., par. 1726.

There is no existing statute of the United States authorizing the President to call out the militia for *drill* merely. The Constitution, in empowering Congress "to provide for organizing, arming, and disciplining the militia," leaves their training to the States, and it is at least doubtful whether an act of Congress regulating the drill of the militia would be constitutional. Ibid., par. 1733.

[2] There are no acts of Congress providing pay, rations, and expenses to militia called out by State or Territorial authority, but disbanded without their having been employed or mustered into the service of the United States previous to their dismissal; such cases, as they have arisen, having been, from time to time, specially provided for. III Opin. Atty. Gen., 528.

PAY, RATIONS, EMOLUMENTS.

Par.
1681. Pay, rations, etc.
1682. Addition to ration.
Par.
1683. Commencement of pay.
1684. Forage and use of horses.

1681. The militia, when called into the actual service of the United States, shall, during their time of service, be entitled to the same pay, rations, clothing, and camp equipage as may be provided by law for the Army of the United States.[1]

Pay, rations, etc.
Mar. 19, 1836, c. 44, s. 1, v. 5, p. 7; July 29, 1861, c. 25, s. 3, v. 12, p. 282.
Sec. 1650, R.S.

1682. When the militia in the military service of the United States are employed on the western frontiers, there shall be allowed two ounces of flour or bread, and two ounces of beef or pork, in addition to each of their rations, and half a pint of salt, in addition to every hundred of their rations.

Addition to ration.
Jan. 2, 1795, c. 9, s. 6, v. 1, p. 409.
Sec. 1655, R.S.

1683. Whenever the militia is called into the actual service of the United States, their pay shall be deemed to commence from the day of their appearing at the place of battalion, regimental, or brigade rendezvous.

When pay to commence.
Jan. 2, 1795, c. 9, s. 3, v. 1, p. 408.
Sec. 1651, R.S.

1684. The officers of all mounted companies in the militia called into service of the United States shall each be entitled to receive forage, or money in lieu thereof, for two horses when they actually keep private servants, and for one horse when without private servants, and forty cents per day shall be allowed for the use and risk of each horse, except horses killed in battle or dying of wounds received in battle. Each noncommissioned officer, musician, artificer, and private of such mounted companies shall be entitled to receive forage in kind for one horse, with forty cents per day for the use and risk thereof, except horses killed in battle or dying of wounds received in battle, and twenty-five cents per day in lieu of forage and subsistence when the same is furnished by himself, or twelve and a half cents per day for either, as the case may be.

Forage and use of horses.
Jan. 2, 1795, c. 9, s. 2, v. 1, p. 408; Mar. 19, 1836, c. 44, s. 2, v. 5, p. 7.
Sec. 1653, R.S.

HALF PAY, PENSIONS, ETC.

Par.
1685. Half pay.
1686. Florida war; pensions.
Par.
1687. Care of wounded.

1685. When any officer, noncommissioned officer, artificer, or private of the militia or volunteer corps dies in the

Provision for widows, etc., of those who die in the service.

---

[1] For statutes regulating pay and allowances see the chapter entitled THE STAFF DEPARTMENTS, and the chapters relating to the duties of the several departments of the staff.

Mar. 19, 1836, c. 44, s. 5, v. 5, p. 7. Sec. 1656, R.S.

service of the United States, or in returning to his place of residence after being mustered out of service, or at any time in consequence of wounds received in service, and leaves a widow, or if no widow, a child or children under sixteen years of age, such widow, or if no widow, such child or children, shall be entitled to receive half the monthly pay to which the deceased was entitled at the time of his death, during the term of five years; and in case of the death or intermarriage of such widow before the expiration of five years, the half pay for the remainder of the time shall go to the child or children of the decedent. And the Secretary of the Interior shall adopt such forms of evidence in applications under this section as the President may prescribe.

Volunteers, etc., to suppress Indian depredations in Florida; benefits to. Mar. 19, 1836, c. 44, s. 4, v. 5, p. 7. Sec. 1657, R.S.

1686. The volunteers or militia who have been received into the service of the United States to suppress Indian depredations in Florida shall be entitled to all the benefits which are conferred on persons wounded or otherwise disabled in the service of the United States.

Care of the wounded. May 8, 1792, c. 33, s. 9, v. 1, p. 273. Sec. 1639, R.S.

1687. If any person, whether officer or soldier, belonging to the militia of any State, and called out into the service of the United States, be wounded or disabled while in actual service, he shall be taken care of and provided for at the public expense.

COURTS-MARTIAL, FINES, ETC.

Par.
1688. Courts-marshal, composition.
1 89. Collection of fines.
Par.
1690. Fines paid into the Treasury.

Courts-martial, how composed. Feb. 28, 1795, c. 36, s. 6, v. 1, p. 424;

1688. Courts-martial for the trial of militia shall be composed of militia officers only.

July 29, 1861, c. 25, s. 5, v. 12, p. 282. Sec. 1658, R.S.

Fines assessed, how to be levied. Feb. 28, 1795, c. 36, s. 7, v. 1, p. 424; Feb. 2, 1813, c. 18, s. 1, v. 2, p. 797; July 29, 1861, c. 25, s. 6, v. 12, p. 282. Sec. 1659, R.S.

1689. All fines assessed under the provisions of law concerning the militia or volunteer corps, when called into the actual service of the United States, shall be certified by the presiding officer of the court-martial, before whom they are assessed, to the marshal of the district in which the delinquent presides, or to one of his deputies, and to the Comptroller of the Treasury, who shall record the certificate in a book to be kept for that purpose. The marshal or his deputy shall forthwith proceed to levy the fines with costs, by distress and sale of the goods and chattels of the delinquent, which costs and the manner of proceeding, with respect to the sale of goods distrained, shall be agreeable to the laws of the State in which the same may be in other cases of distress. And where any noncommissioned officer or private is adjudged to suffer imprisonment, there being no goods or chattels to be found whereof to levy the fines, the marshal of the district or his deputy shall commit such delinquent to jail, during the term for which he is so adjudged to imprisonment, or until the fine is paid, in the same manner as other persons condemned to fine and imprisonment at the suit of the United States may be committed.

1690. The marshal shall pay all fines collected by him or his deputy, under the authority of the preceding section, into the Treasury of the United States, within two months after he has received the same, deducting five per centum for his compensation, and in case of failure, it shall be the duty of the Comptroller of the Treasury to give notice to the district attorney of the United States, who shall proceed against the marshal in the district court, by attachment, for the recovery of the same.

To be paid into the Treasury of the United States.

Feb. 28, 1795, c. 36, s, 8, v. 1, p. 425; Feb. 2, 1813, c. 18, s. 2, v. 2, p. 797; July 29, 1861, c. 25, s. 6, v. 12, p. 282.

Sec. 1660, R.S.

ARMAMENT AND EQUIPMENT.

Par.
1691. Permanent appropriation.
1692. Appropriation not to lapse.
1693. Apportionment.
1694. Purchases, etc., to be under direction of the Secretary of War.
1695. Returns of property issued.
1696. Unserviceable arms, etc.
1897. Purchases by States.
1898. Credit of cost; appropriation not to lapse.

Par.
1699. The same.
1700. Issues of Springfield breech-loading rifles.
1701. Replacing ordnance.
1702. Distribution of undrawn quotas.
1703. Credits for same.
1704. Inquiry as to disposition of issues to States.
1705. Issue of heavy guns and mortars.
1706. Restriction on payment of freight.

1691. The sum of one million dollars is hereby annually appropriated, to be paid out of any money in the Treasury not otherwise appropriated, for the purpose of providing arms, ordnance stores, quartermaster's stores, and camp equipage for issue to the militia.[1] *Act of June 6, 1900 (31 Stat. L., 662).*

Annual appropriation for arms and equipments.

Apr. 23, 1808, c. 55, s. 1, v. 2, p. 490; Apr. 29, 1816, c. 135, s. 1, v. 3, p. 320; Mar. 3, 1875, c. 133, s. 3, v. 18, p. 455; Feb. 12, 1887, v. 24, p. 401; June 6, 1900, v. 31, p. 662.

Sec. 1661, R.S.

1692. The permanent annual appropriation made by the act of April twenty-third, eighteen hundred and eight,

Permanent appropriation for arming militia not to lapse.

---

[1] The appropriation for "providing arms and equipments for the whole body of the militia, either by purchase or manufacture," authorizes the use of the money in the manufacture of arms at the National Armories. IX Opin. Att. Gen., 16.

The cost of transporting arms and equipments to the points designated by proper authority for issue to the militia of the several States and Territories and the District of Columbia is an expenditure incident to the object of the appropriation "Arming and equipping the militia," made by the act of February 12, 1887 (24 Stat. L., 401, 402), and is therefore properly chargeable to it, unless provision is specifically made therefor. (3 Dig. 2d Comp. Dec., 356.)

V. 24, p. 401. Aug. 18, 1894, v. 28, p. 406.

designated as section sixteen hundred and sixty-one of the Revised Statutes, and which was increased to four hundred thousand dollars by the act of February twelfth, eighteen hundred and eighty-seven, being for the procurement of ordnance and ordnance stores and quartermaster's stores and camp equipage for the use of the militia of the country, shall not lapse with the end of any fiscal year nor be turned into the surplus fund, but shall remain a permanent appropriation and be available for the several States and Territories and District of Columbia until expended as provided in said acts or otherwise disposed of by Congress.[1] *Act of August 18, 1894 (28 Stat. L., 406).*

Apportionment. Feb. 12, 1901, v. 24, p. 401. Sec. 1661, R. S.

1693. Said appropriation shall be apportioned among the several States and Territories, under the direction of the Secretary of War, according to the number of Senators and Representatives to which each State respectively is entitled in the Congress of the United States, and to the Territories and District of Columbia in such proportion and under such regulations as the President may prescribe: *Provided, however*, That no State shall be entitled to the benefits of the appropriation apportioned to it unless the number of its regularly enlisted, organized, and uniformed active militia shall be at least one hundred men for each Senator and Representative to which such State is entitled in the Congress of the United States. And the amount of said appropriation which is thus determined not to be available shall be covered back into the Treasury.[2] *Sec. 2, Act of February 12, 1901 (24, Stat. L., 401).*

States having uniformed militia only, entitled.

Secretary of War to direct purchase of arms, etc. Sec. 3, *ibid.*

1694. That the purchase or manufacture of arms, ordnance stores, quartermaster's stores, and camp equipage for the militia under the provisions of this act shall be made under the direction of the Secretary of War, as such arms, ordnance and quartermaster's stores and camp equipage are now manufactured or otherwise provided for the use of the Regular Army, and they shall be receipted for and shall remain the property of the United States, and be annually accounted for by the governors of the States and Territories, for which purpose the Secretary of War shall prescribe and supply the necessary blanks and make such regulations as he may deem necessary to protect the interest of the United States.[1] *Sec. 3, ibid.*

---

[1] The States do not, by the existing laws, have an absolute right of property in such arms, and they derive no authority therefrom to sell or dispose of them at pleasure. XIV Opin. Att. Gen., 491.

[2] The arms transmitted to the States under the laws which are embodied in sections 1661, 1667, and 1670 of the Revised Statutes are, in contemplation of the provisions thereof, to be held by the States for a specific purpose only, which is pointed out therein; hence, they become invested with nothing more than a qualified property in such arms; and they can not, as a matter of right, and without interfering with the regulations of Congress on a subject over which its authority is paramount, make any disposition or use of such arms which defeats the purpose referred to. XIV Opin. Atty. Gen. 491. Yet those laws make no provision for any accountability to the United States respecting the disposition of the arms after they are once delivered to the State authorities, Congress having seen fit to leave it entirely to the good faith of the States, when the delivery takes place, to carry out the purpose contemplated in furnishing the same. Ibid. Congress, by the act of February 12, 1887 (24 Stat. L., 401), has provided a system of accountability for the several States in respect to the arms, ammunition, equipage and other public property issued to the States for the use of the militia. See paragraphs 1694 and 1700, *post.*

For provision of the statutes respecting certain special issues of arms and ammunition to the militia of the States and Territories, see paragraphs 1780 and 1781 *post.*

Returns. Feb. 24, 1897, s. 2, v. 29, p. 592.

1695. Each State and Territory shall hereafter make an annual return to the Secretary of War of all the arms issued to them under this or any former Act of Congress, as provided for in the act of February (twelfth), eighteen hundred and eighty-seven,[2] making a permanent annual appropriation for arming and equipping the militia. *Sec. 2, act of February 24, 1897 (29 Stat. L., 592).*

Unserviceable arms, etc. Aug. 18, 1894, s. 4, v. 28, p. 406.

1696. All arms, equipments, ordnance stores, or tents which may become unserviceable or unsuitable shall be examined by a board of officers of the militia, and its report shall be forwarded by the governor of the State or Territory direct to the Secretary of War, who shall direct what disposition, by sale or otherwise, shall be made of them; and, if sold, the proceeds of such sale shall be covered into the Treasury of the United States. *Sec. 4, act of August 18, 1894 (28 Stat. L., 406).*

Purchases. Feb. 24, 1897, s. 3, v. 29, p. 592.

1697. Any State or Territory may, in addition to the stores and supplies issued under the provisions of this act and the act of February (twelfth), eighteen hundred and eighty-seven, purchase for the use of its National Guard or reserve militia, at regulation prices for cash at place of sale, such stores and supplies from any department of the Army as, in the opinion of the Secretary of War, can be spared.[3] *Sec. 3, act of February 24, 1897 (29 Stat. L., 592).*

Credit of cost, etc. Mar. 15, 1898, v. 30, p. 326.

1698. The cost of all stores and supplies sold to any State or Territory under section three of the act approved February twenty-fourth, eighteen hundred and ninety-seven, shall be credited to the appropriation from which they were procured, and remain available to procure like stores and supplies for the Army in lieu of those sold as aforesaid. *Act of March 15, 1898 (30 Stat. L., 326).*

---

[1] See section 2, act of Feb. 12, 1887 (24 Stat. L., 401), par. 1693, *ante.*

[2] Section 1661, Revised Statutes, paragraph 1693, *ante.*

[3] The proceeds of such sales must be covered into the Treasury as miscellaneous receipts. Compt. Dec., Aug. 22, 1900 (Circular 30, A. G. O., 1900); see, also, IV Compt. Dec., 688; v. ibid., 229, 230.

Appropriation available.
Sept. 22, 1888, v. 25, p. 487.

1699. The cost to the Ordnance Department of all ordnance and ordnance stores issued to the States, Territories, and District of Columbia, under the act of February twelfth, eighteen hundred and eighty-seven, shall be credited to the appropriation for "manufacture of arms at national armories," which appropriation for eighteen hundred and eighty-nine and thereafter shall be available until exhausted. *Act of September 22, 1888 (25 Stat. L., 487).*

Issues of Springfield breech-loading rifles to States, etc.
Feb. 25, 1897, v. 29, p. 592.

1700. The Secretary of War is hereby authorized to issue to governors of the several States and Territories such number of Springfield breech-loading rifles, caliber forty-five one-hundredths of an inch, as are now required for arming all of the regularly organized armed and equipped militia (generally known as the National Guard) of each State and Territory that are not already supplied with this arm: *Provided*, That each State or Territory be required on receipt of the new arms to turn in to the Ordnance Department, United States Army (without receiving any money credit therefor), an equal number of the arms now in its possession, except its Springfield rifles, caliber forty-five one-hundredths of an inch. *Act of February 24, 1897 (29 Stat. L., 592).*

Replacing ordnance used in war with Spain.
Mar. 3, 1899, v. 30, p. 1073.

1701. On application of the governor of any State or Territory the Secretary of War is authorized to replace the ordnance and ordnance stores which the volunteers from said State or Territory carried into service of the United States Army during the recent war with Spain, and which have been retained by the United States. *Act of March 3, 1899 (30 Stat. L., 1073.)*

Distribution to States which had not received their quota from 1862 to 1869.
Mar. 3, 1873, c. 282, v. 17, p. 608.
Sec. 1670, R.S.

1702. The Secretary of War is authorized and directed to distribute, to such States as did not receive the same, their proper quota of arms and military equipments for each year, from eighteen hundred and sixty-two to eighteen hundred and sixty-nine, under the provisions of section sixteen hundred and sixty: *Provided*, That in the organization and equipment of military companies and organizations with such arms no discrimination shall be made between companies and organizations on account of race, color, or former condition of servitude.

Arms, etc., issued to States and Territories between Jan. 1, 1861, and Apr. 9, 1865, and used to suppress rebellion.
1808, c. 55, v. 2, p. 490.

1703. All issues of arms and other ordnance stores which were made by the War Department to the States and Territories between the first day of January, eighteen hundred and sixty-one, and the ninth day of April, eighteen hundred and sixty-five, under the act of April twenty-third, eighteen hundred and eight, and charged to the States and Territories, having been made for the maintenance and preservation of the Union, and properly chargeable to the United States, the Secretary of War is hereby authorized, upon a proper showing by such States of the faithful disposition of said arms and ordnance stores in the service of the United States in the suppression of the war of the rebellion, to credit the several States and Territories with the sum charged to them, respectively, for arms and other ordnance stores which were issued to them between the aforementioned dates, and charged against their quotas under the law for arming and equipping the militia.[1] *Sec. 3, act of March 3, 1875 (18 Stat. L., 455).*

Sec. 3, Mar. 3, 1875, v. 18, p. 455.

Credit to States, etc.

1704. It shall be the duty of the Secretary of War, before making a credit to any of said States and Territories, to investigate and ascertain, so nearly as he can, the disposition made by each of said States and Territories of said arms and ordnance stores; and if he shall find that any of said arms or ordnance stores have been sold or otherwise misapplied, to refuse a credit to such State or Territory for so much of said arms and ordnance stores as have been sold or misapplied; and the amount thereof shall remain a charge against said State or Territory, the same as if this act had not been passed.[2] *Ibid.*

Inquiry as to disposition of arms, etc. *Ibid.*

1705. The Secretary of War is hereby authorized, at his discretion, to issue, on the requisition of the governor of a State bordering on the sea or Gulf coast, and having a permanent camping ground for the encampment of the militia not less than six days annually, two heavy guns and four mortars, with carriages and platforms, if

Issues of ordnance for practice in heavy artillery drill. Sec. 2, May 19, 1882, v. 22, p. 93.

---

[1] The act of March 3, 1875 (18 Stat. L., 455), authorized the Secretary of War to credit the several States and Territories with arms drawn by them between January 1, 1861, and April 23, 1868, and not sold or otherwise misapplied, or used for the purchase of arms to be distributed to the States in rebellion. The act of March 3, 1887 (24 Stat. L., 551), repealed so much of the act of March 3, 1875, as required the unexpended balances of the appropriations for the purchase of arms for distribution to the States in rebellion to be covered into the Treasury.

[2] By several statutes special authority is conferred upon the Secretary of War to adjust the accounts of particular States and Territories for issues of arms and munitions of war. For such provisions as to the State of Kansas, see the acts of August 15, 1876 (19 Stat. L., 206); July 28, 1886 (24 Stat. L., 159); as to the Territory of Montana, see the act of February 15, 1887 (24 Stat. L., 404); as to the Territory of Dakota, see the act of February 28, 1887 (24 Stat. L., 432); as to the State of Washington, see the act of June 10, 1890 (26 Stat. L., 130); as to the State of Colorado, see the act of August 4, 1886 (24 Stat. L., 219). The act of January 16, 1889 (25 Stat. L., 646), authorized the Secretary of War to issue additional arms and military stores to the Territory of Montana; the same statute authorized a similar issue to the State of Oregon. The joint resolution of June 7, 1878 (20 Stat. L., 252), authorized the issue of 1,000 stand of arms, with 50 cartridges to each, to each of the Territories, in addition to those already authorized by law. See also the title "Arms, Armories, and Arsenals," in the chapter entitled THE ORDNANCE DEPARTMENT.

such can be spared, for the proper instruction and practice of the militia in heavy artillery drill, and for this purpose a suitable battery for these cannon will be constructed; and for said construction and the transportation of said cannon, and so forth, the sum of five thousand dollars is hereby appropriated for supplying each State that may so apply. *Sec. 2, act of May 19, 1882 (22 Stat. L., 93).*

Restriction on transportation.
Mar. 2, 1901, v. 31, p. 910.

1706. No part of the appropriations made for the Ordnance Department shall be used in payment of freight charges on ordnance or ordnance stores issued by said department. *Act of March 2, 1901 (31 Stat. L., 910).*

THE MILITIA OF THE DISTRICT OF COLUMBIA.

Par.
1707–1711. The enrolled militia.
1712–1716. Command.
1717–1725. The active militia, organization.
1726–1731. Commissioned officers.
1732. Noncommissioned officers.
1733–1737. Enlisted men.
Par.
1738–1750. Arms, uniforms, and equipments.
1751–1760. Military duties.
1761–1765. Military tribunals.
1766–1770. Expenses and allowances.
1771–1776. General provisions.

THE ENROLLED MILITIA.

Par.
1707. Liability to enrollment.
1708. Exemptions.
1709. Assessors to enroll the militia.
Par.
1710. Duty.
1711. Calling forth the militia.

Militia of the District of Columbia.
Mar. 1, 1889, v. 25, p. 772.

Persons to be enrolled.

1707. Every able-bodied male citizen resident within the District of Columbia, of the age of eighteen years and under the age of forty-five years, excepting persons exempted by section two, and idiots, lunatics, common drunkards, vagabonds, paupers, and persons convicted of any infamous crime, shall be enrolled in the militia. Persons so convicted after enrollment shall forthwith be disenrolled; and in all cases of doubt respecting the age of a person enrolled, the burden of proof shall be upon him. *Act of March 1, 1889 (25 Stat. L., 772.)*

Exemption.
Sec. 2, *ibid.*

1708. In addition to the persons exempted from enrollment in the militia by the general laws of the United States, the following persons shall also be exempted from enrollment in the militia of the District of Columbia, namely: Officers of the government of the District of Columbia; judges and officers of the courts of the District of Columbia; officers who have held commissions in the Regular or Volunteer Army or Navy of the United States;

officers who have served for a period of five years in the militia of the District of Columbia or of any State of the United States; ministers of the gospel; practicing physicians; conductors and engine-drivers of railroad trains; members of the paid police and fire department. *Sec. 2, ibid.*

Assessors to enroll. Sec. 3, *ibid.*

1709. The Commissioners of the District of Columbia shall provide for the enrollment of the militia, and for this purpose may require the assessors of taxes, at the same time they are engaged in taking the assessment of valuation of real and personal property, to make a list of persons liable to enrollment; and such record shall be deemed a sufficient notification to all persons whose names are thus recorded that they have been enrolled in the militia. Immediately after the completion of each enrollment they shall furnish the commanding general of the militia with a copy of the same. *Sec. 3, ibid.*

Duty. Sec. 4, *ibid.*

1710. The enrolled militia shall not be subject to any duty except when called into the service of the United States, or to aid the civil authorities in the execution of the laws or suppression of riots. *Sec. 4, ibid.*

Ordering into service. Sec. 5, *ibid.*

1711. Whenever it shall be necessary to call out any portion of the enrolled militia the commander in chief shall order out, by draft or otherwise, or accept as volunteers as many as required. Every member of the enrolled militia who volunteers, or who is ordered out or drafted under the provisions of this act, who does not appear at the time and place designated, may be arrested by order of the commanding general and be tried and punished by a court-martial. The portion of the enrolled militia ordered out or accepted shall be mustered into service for such period as may be required, and the commanding general may assign them to existing organizations of the active militia, or may organize them as the exigencies of the occasion may require. *Sec. 5, ibid.*

COMMAND.

Par.
1712. Commander in chief.
1713. Commanding general.
1714. Staff, noncommissioned staff.

Par.
1715. Detail of army officer as adjutant-general.
1716. Detail of retired officer.

Commander in chief. Sec. 6, *ibid.*

1712. The President of the United States shall be the commander in chief of the militia of the District of Columbia. *Sec. 6, ibid.*

Commanding general. Sec. 7, *ibid.*

1713. There shall be appointed and commissioned by the President of the United States a commanding general of the militia of the District of Columbia, with the rank of brigadier-general, who shall hold office until his successor is appointed and qualified, but may be removed at any time by the President. *Sec. 7, ibid.*

Staff officers. Sec. 8, *ibid.*

1714. The staff of the militia of the District of Columbia shall be appointed and commissioned by the President, and hold office until their successors are appointed and qualified, but may be removed at any time by the President. It shall consist of one adjutant-general, with the rank of lieutenant-colonel; one inspector-general, one quartermaster-general, one commissary-general, one chief of ordnance, one chief engineer, one surgeon-general, one judge-advocate-general, and one inspector-general of rifle practice, each with the rank of major; and four aids-de-camp, each with the rank of captain. The commanding general may appoint a noncommissioned staff of the militia to consist of one sergeant-major, one quartermaster-sergeant, one commissary-sergeant, one ordnance-sergeant, two staff sergeants, one hospital steward, one color-sergeant, and one sergeant-bugler. *Sec. 8, ibid.*

Noncommissioned staff.

Detail for adjutant-general. Sec. 9, *ibid.*

1715. The President may assign an officer of the Army to act as adjutant-general of the militia of the District of Columbia, who, while so assigned, shall be commissioned as such and be subject to the orders of the commanding general and the provisions of this act: *Provided, however,* That the officer so assigned shall receive no other pay or emolument than that to which his rank in the Army entitles him when on detached service.[1] *Sec. 9, ibid.*

Pay.

Detail of retired officer. June 6, 1900, v. 31, p. 671.

1716. The President of the United States may detail as adjutant-general of the District of Columbia militia any retired officer of the Army who may be nominated to the President by the brigadier-general commanding the District of Columbia militia, said retired officer while so detailed to have the active-service pay and allowances of his rank in the Regular Army. *Act of June 6, 1900 (31 Stat. L., 671).*

---

[1] *Held* that it would not be within the prohibitions of section 1222, Revised Statutes, but legal, to detail an officer of the Army to act as adjutant-general of the militia of the District of Columbia, there being no such office established by law; that such officer, in so acting, would be performing military service and would not be holding a "civil office." Dig. Opin. J. A. G., 521, par. 16.

THE ACTIVE MILITIA.

ORGANIZATION.

Par.
1717. The active militia; the National Guard.
1718. Strength, peace basis.
1719. Infantry regiments.
1720. Infantry battalions.
1721. Infantry companies.
Par.
1722. Artillery battery.
1723. Signal, ambulance, and engineer corps.
1724. Band.
1725. Disbanding companies below minimum in strength.

Organization of National Guard.
Mar. 1, 1889, s. 10, v. 25, p. 772.

1717. The active militia shall be composed of volunteers, and shall be designated the National Guard of the District of Columbia; and in case the militia of the District of Columbia are called into the service of the United States, or required for the suppression of riots, or to aid civil officers in the execution of the laws, shall be the first to be ordered into service. *Sec. 10, act of March 1, 1889 (25 Stat. L., 772).*

Strength on peace basis.
Sec. 11, *ibid.*

1718. In time of peace the National Guard shall consist of not more than twenty-eight companies of infantry, which shall be arranged by the commanding general into such regiments, battalions, and unattached companies as he may deem expedient; one battery of light artillery; one signal corps; one ambulance corps; one engineer corps; one band of music, and one corps of field musicians. *Sec. 11, ibid.*

Regiments of infantry.
Sec. 12, *ibid.*

1719. Regiments of infantry shall consist of three battalions; and to each regiment there shall be one colonel and one lieutenant-colonel, and a staff to consist of one surgeon, one adjutant, one quartermaster, one inspector of rifle practice, and one chaplain, each with the rank of captain; and a noncommissioned staff, consisting of one sergeant-major, one quartermaster-sergeant, one commissary-sergeant, and one hospital steward. *Sec. 12, ibid.*

Infantry battalions.
Sec. 13, *ibid.*

1720. Battalions of infantry shall consist of four companies; and to each battalion there shall be one major, and a staff consisting of one surgeon, one adjutant, one quartermaster, and one inspector of rifle practice, each with the rank of first lieutenant; and a noncommissioned staff, consisting of one sergeant-major, one quartermaster-sergeant, and one hospital steward. *Sec. 13, ibid.*

Infantry companies.
Sec. 14, *ibid.*

1721. To each company of infantry there shall be one captain, one first lieutenant, one second lieutenant, one first sergeant, four sergeants, one corporal to each ten privates, and not more than eighty-seven privates; and the minimum number of enlisted men shall be forty. *Sec. 14. ibid.*

Artillery battery.
Sec. 15, *ibid.*

1722. The battery of light artillery shall have not less than four nor more than six guns. To four guns there shall be one captain, two first lieutenants, one second lieutenant, one first sergeant, one quartermaster-sergeant, five sergeants, eight corporals, two buglers, and not more than eighty-two privates; and the minimum number of enlisted men shall be fifty-seven. To more than four guns there shall be, for each additional gun, one sergeant, two corporals, and not more than twenty nor less than ten privates; for two additional guns there shall be one additional second lieutenant. *Sec. 15, ibid.*

Signal, ambulance, and engineer corps.
Sec. 16, *ibid.*

1723. To each signal corps, ambulance corps, and engineer corps there shall be one first lieutenant, two sergeants, two corporals, and not more than thirty-two nor less than fourteen privates. *Sec. 16, ibid.*

Band.
Sec 17, *ibid.*

1724. The band of music shall consist of one chief musician, two sergeants, two corporals, and thirty-two privates; and the corps of field music of one principal musician, two sergeants, two corporals, and thirty-two privates. The chief musician, principal musician, and other noncommissioned officers of the band and field music shall be appointed by the commanding general. *Sec. 17, ibid.*

Disbanding of companies below minimum strength.
Sec. 18, *ibid.*

1725. When any company of the National Guard shall, for a period of not less than ninety days, contain less than the minimum number of enlisted men prescribed by this act, or upon a duly ordered inspection shall be found to have fallen below a proper standard of efficiency, the commanding general may either disband such company or consolidate it with any other company of the National Guard, and grant an honorable discharge to the supernumerary officers and noncommissioned officers produced by such consolidation. Officers and enlisted men discharged by reason of such disbanding or consolidation and at any time thereafter reentering the service shall have allowed to them, as part of their term of service, the time already served. *Sec. 18, ibid.*

COMMISSIONED OFFICERS.

Par.
1726. Commissioned by the President.
1727. Staff officers.
1728. Field officers; company officers.

Par.
1729. Elections.
1730. Examinations.
1731. Discharges.

Commission.
Sec. 19, *ibid.*

1726. All officers shall be commissioned by the President of the United States. In time of peace, or when not in the service of the United States, they shall previously be elected or nominated as herein provided. No person commissioned as an officer shall assume such rank or enter upon the duties of the office to which he may be commissioned until he has accepted such commission and taken such oath or affirmation as may be prescribed. *Sec. 19, ibid.*

Oath.

Staff officers. Sec. 20, *ibid.*

1727. The staff officers of a regiment or battalion shall be nominated by the permanent commander thereof. *Sec. 20, ibid.*

Field officers.

Company officers. Sec. 21, *ibid.*

1728. Field officers of regiments or battalions shall be nominated by the commanding general. Captains and lieutenants of companies shall be elected by the written votes of the enlisted men of the respective companies.[1] *Sec. 21, ibid.*

Elections. Sec. 22, *ibid.*

1729. Elections of officers shall be ordered and held under such regulations as may be prescribed by the commanding general. *Sec. 22, ibid.*

Examinations. Sec. 23, *ibid.*

1730. Every person accepting an election or nomination as an officer shall appear before an examining board, to be appointed by the commanding general, which board shall examine said officer as to his military and other qualifications. If any officer shall fail to appear before the board of examination within thirty days after being notified, or shall fail to pass a satisfactory examination, the fact shall be certified by the board to the commanding general, who shall thereupon declare the election or nomination of such officer null and void. If, in the opinion of the board, such officer is competent and otherwise qualified, they shall certify the fact to the commanding general, who shall thereupon recommend him to the President for commission. *Sec. 23, ibid.*

Discharges. Sec. 24, *ibid.*

1731. A commissioned officer may be honorably discharged—

Upon tender of resignation;

Upon disbandment of the organization to which he belongs;

Upon report of a board of examination, or for failure to appear before such board when ordered.

---

[1] Section 21 of the act of March 1, 1889, reorganizing the District of Columbia militia, requires that captains and lieutenants of companies shall be elected by the enlisted men of the same. *Held*, that this enactment would prevent the assignment to a company of an officer not first elected thereby. So that it would require that such officers be appointed as officers of the particular companies by which they had been elected, and would not permit of their appointment simply to the arm of service, as in the Army. Dig. Opin. J. A. G., 22, par. 17.

He may be dismissed upon the sentence of a court-martial or conviction in a court of justice of an infamous offense. *Sec. 24, ibid.*

NONCOMMISSIONED OFFICERS.

Noncommissioned officers. Appointment. Sec. 25, *ibid.*

1732. Noncommissioned staff officers shall be appointed by the permanent commander of the organization to which they belong; and permanent commanders of battalions shall appoint the noncommissioned officers of companies, upon the written nomination of the respective captains; but they may withhold such appointment if, in their judgment, there be proper cause; noncommissioned officers of unattached companies shall be appointed by their respective captains. The permanent commander of any battalion or unattached company may reduce to the ranks any company noncommissioned officers of his command. *Sec. 25, ibid.*

ENLISTED MEN.

Par.
1733. Enlistment; term; reenlistment.
1734. Oath.
1735. Discharge, honorable.
1736. Dishonorable discharge.
1737. Discharge certificates.

Enlistment. Term. Reenlistment. Sec. 26, *ibid.*

1733. Enlistment in the National Guard shall be for the term of three years: *Provided, however,* That any soldier who may have received an honorable discharge, by reason of the expiration of his term of service, may, within thirty days thereafter, reenlist for a term of one, two, or three years, to date from the expiration of his previous term. All terms of service, except in case of reenlistment, shall commence at noon on the day of enlistment and expire at noon on the day of discharge. *Sec. 26, ibid.*

Oath, etc. Sec. 27, *ibid.*

1734. Every person enlisting in the National Guard shall sign an enlistment paper which shall contain an oath of allegiance to the United States. The requisites and regulations for enlistment and the form of enlistment paper and oath for enlisting men shall be prescribed by the commanding general. *Sec. 27, ibid.*

Discharges: Honorable. Sec. 28, *ibid.*

1735. No enlisted man shall be honorably discharged before the expiration of his term of service, except by order of the commanding general, and for the following reasons:

Upon his own application, approved by the commanding officer of his company and by superior commanders;

Upon removal from the District;

Upon disability, established by certificate of medical officer;

To accept promotion by commission;

Whenever, in the opinion of the commanding general, the interest of the service demand such discharge. *Sec. 28, ibid.*

Dishonorable. Sec. 29, *ibid.*

1736. Enlisted men shall be dishonorably discharged by order of the commanding general:

To carry out the sentence of a court-martial;

Upon conviction of felony in a civil court;

Upon expulsion from his company, in accordance with its by-laws or regulations;

Upon discovery of reenlistment after previous dishonorable discharge. *Sec. 29, ibid.*

Certificate of discharge. Sec. 30, *ibid.*

1737. Every soldier discharged from the service of the District shall be furnished with a certificate of such discharge, which shall state clearly the reasons therefor. Dishonorable discharges will have the word "dishonorable" written or printed diagonally across their faces, in large characters, with red ink, and the reenlistment clause will be erased by a line. *Sec. 30, ibid.*

ARMS, UNIFORMS, AND EQUIPMENTS.

Par.
1738. Arms, equipments, etc.
1739. Issued by Secretary of War.
1740. Issues made from army stores.
1741. Regulations for issue, care, etc.
1742. Returns.
1743. Selling, disposing, pawning, etc., penalty.
Par.
1744. Accountability of officers.
1745. Unserviceable property.
1746. Distinctive uniforms.
1747. Private property of organizations.
1748. Armories.
1749. Deductions of pay, deposit.
1750. The same, expenditure.

Arms, equipments. Sec. 31, *ibid.*

1738. The uniforms, arms, and equipments of the National Guard shall be the same as prescribed and furnished to the Army of the United States. Every organization of the National Guard shall be provided with such ordnance and ordnance stores, clothing, camp and garrison equipage, quartermaster's stores, medical supplies, and other military stores, as may be necessary for the proper training and instruction of the force and for the proper performance of the duties required under this act. *Sec. 31, ibid.*

To be issued by Secretary of War. The same.

1739. Such property shall be issued from the stores and supplies appropriated for the use of the Army, upon the approval and by the direction of the Secretary of War, to the commanding general, upon his requisitions for the same. The property so issued shall remain and continue to be the property of the United States, and shall be accounted for by the commanding general at such times, in manner, and on such forms, as the Secretary of War may require.[1] *Sec. 31, ibid.*

Issues to be made from Army stores. July 23, 1888, v. 25, p. 627.

1740. The Secretary of War is hereby authorized to issue from the stores of the Army such arms, ordnance stores, quartermaster's stores, and camp equipage to the militia of the District of Columbia as he may deem necessary for their proper equipment and instruction. The property so issued shall remain and continue to be the property of the United States, and shall be annually accounted for in such manner as the Secretary of War may require. *Act of July 23, 1888 (25 Stat. L., 627).*

Regulations for issue, care, etc. Mar. 1, 1889, s. 32, v. 25, p. 772.

1741. The commanding general may transfer all public property, received by him for the use of the National Guard under the provision of this act, to the several departmental offices of the general staff, and may make and prescribe regulations for its issue by them, and for its care and preservation by the officers or soldiers to whom issued. *Sec. 32, act of March 1, 1889 (25 Stat. L., 772).*

Returns, etc. Sec. 33, *ibid.*

1742. Every officer receiving public property for military use shall be accountable for the articles so received by him, and shall make returns of such property at such times, in such manner, and on such forms as may be prescribed. He shall be liable to trial by court-martial for neglect of duty, and also make good to the United States the value of all such property defaced, injured, destroyed, or lost, by any neglect or default on his part, to be recovered in an action of tort, or by any other action at law, to be instituted by the judge-advocate-general of the militia at the order of the commanding general. All money received on account of loss or damages shall be paid in the Treasury of the United States, and shall be accounted for by the commanding general in his returns to the Secretary of War. *Sec. 33, ibid.*

Punishment for selling, etc., public property. Sec. 34, *ibid.*

1743. Any officer or soldier who shall sell, dispose of, pawn or pledge, willfully destroy or injure, or retain after proper demand made any public property issued under the provisions of this act, shall be deemed guilty of a misdemeanor, and shall be punished by imprisonment for not exceeding two months, or by a fine not exceeding one hundred dollars, or by both; and it is hereby made the duty of the judge of the police court of the District of Columbia, upon information filed or complaint made under oath, to issue process for the arrest of the offender, and to cause him to be brought before the police court to be dealt with according to the provisions of this section. *Sec. 34, ibid.*

---

[1] *Held* that the "military stores" required by section 31 of the act of March 1, 1889, to be furnished for the militia of the District of Columbia, did not include copies of the Infantry Drill Regulations. Dig. Opin. J. A. G., 521, par. 14.

Held that the clothing and camp and garrison equipage issued to the District of Columbia militia, under section 31 of the act of March 1, 1889, was properly to be inspected by militia, not by army officers; and that the condemned portion, if any, was to be reported by the commanding general of the militia to the Secretary of War, to be disposed of as he should direct. Ibid., par. 15. See also act of July 23, 1888, paragraph 1287, *post.*

Accountability of officers. Sec. 35, *ibid.*

1744. Until an officer or his legal representative shall have received notice that the property accounts of such officer have been examined and found correct, the liability of such officer, or of his estate, for public property for which he is or may have been responsible shall be in no way affected by resignation, discharge, change in official position, or death. Upon the death or desertion of an officer responsible for public property his immediate commander shall at once cause the property for which such officer was responsible to be collected, and a correct inventory made by actual count and examination; which inventory shall be forwarded to the commanding general, in order that any deficiency may be made good from the estate of the deceased or deserting officer; compensation for such deficiency may be recovered in the manner provided in section thirty-four. *Sec. 35, ibid.*

Unserviceable property. Sec. 36, *ibid.*

1745. Property issued or provided under the provisions of this act which becomes unfit for use and is condemned as unserviceable shall be reported by the commanding general to the Secretary of War, and shall be disposed of as may be directed by him. *Sec. 36, ibid.*

Distinctive uniforms. Sec. 37, *ibid.*

1746. Any organization of the active militia may, with the approval of the commanding general and at its own expense, adopt any other uniform than that issued to it; but such uniform shall not be worn when such organization is on duty under the orders of the commanding general except by his permission. *Sec. 37, ibid.*

Right to own personal property. Sec. 38, *ibid.*

Actions for injuries to.

1747. Organizations of the National Guard shall have the right to own and keep personal property, which shall belong to and be under the control of the active members thereof; and the commanding officer of any organization may recover for its use any debts or effects belonging to it, or damages for injury to such property; action for such recovery to be brought, in the name of such commanding officer, before any justice of the peace, with the right of appeal to the supreme court of the District of Columbia, or before the supreme court of the District of Columbia; and no suit or complaint pending in his name shall be abated by his ceasing to be commanding officer of the organization; but, upon the motion of the commander succeeding him, such commander shall be admitted to prosecute the suit or complaint in like manner and with like effect as if it had been originally commenced by him. *Sec. 38, ibid.*

Armories to be provided.
Sec. 39, *ibid.*

1748. The quartermaster-general of the militia shall provide, by rental or otherwise, such armories for the National Guard as may be allowed and directed by the commanding general. He shall also provide each organization with such lockers, closets, gunracks, and cases or desks, as may be necessary for the care, preservation, and safekeeping of the arms, equipments, uniforms, records, and other military property in their possession. He shall also provide suitable rooms for the offices of the commanding general and staff, for the keeping of books, the transaction of business, and the instruction of officers, and also suitable places for the storage and safe-keeping of public property. *Sec. 39, ibid.*

Deductions from pay to be deposited.
Mar. 1, 1901, v. 31, p. 845

1749. All moneys collected on account of deductions made from the pay of any officer or enlisted man of the National Guard of the District of Columbia, on account of Government property lost or destroyed by such individual, shall be repaid into the United States Treasury to the credit of the officer of the militia of the District of Columbia, who is accountable to the United States Government for such property lost or destroyed. *Act of March 1, 1901 (31 Stat. L., 845).*

Expenditure of funds obtained by deduction.
Mar. 1, 1901, v. 31, p. 845.

1750. All moneys collected on account of deductions made from the pay of any officer or enlisted man of the National Guard of the District of Columbia for or on account of any violation of the regulations governing said National Guard shall be held by the commanding general of the militia of the District of Columbia, who is authorized to expend such moneys so collected for general incidental expenses of the service; and for all moneys so collected and expended the commanding general shall make an accounting in like manner as for the appropriation disbursed for pay of troops. *Act of March 1, 1901 (31 Stat. L., 845).*

MILITARY DUTIES.

Par.
1751. Drill, a military duty.
1752. Commanding general to prescribe drills, etc.
1753. Annual inspection.
1754. Encampments.
1755. Use of grounds at Washington Barracks.

Par.
1756. Suppression of riots.
1757. Excuses from duty.
1758. Parades, right of way.
1759. Parades and encampments, rules for.
1760. Government employees.

Drills, etc., to be a military duty.
Sec. 40, *ibid.*

1751. Any drill, parade, encampment, or duty that is required, ordered, or authorized to be performed under the provisions of this act shall be deemed to be a military duty, and while on such duty every officer and enlisted man of the National Guard shall be subject to the lawful orders of his superior officers, and for any military offense may be put and kept under arrest or under guard for a time not extending beyond the term of service for which he is then ordered. *Sec. 40, ibid.*

Prescribing drills, etc.
Sec. 41, *ibid.*

1752. The commanding general shall prescribe such stated drills and parades as he may deem necessary for the instruction of the National Guard, and may order out any portion of the National Guard for such drills, inspections, parades, escort, or other duties, as he may deem proper.[1] The commanding officer of any regiment, battalion, or company may also assemble his command, or any part thereof, in the evening for drill, instruction, or other business, as he may deem expedient; but no parade shall be performed by any regiment, battalion, company, or part thereof without the permission of the commanding general. *Sec. 41, ibid.*

Annual inspection.
Sec. 42, *ibid.*

1753. An annual inspection and muster of each organization of the National Guard, and an inspection of their armories and of public property in their possession, shall be made at such times and places as the commanding general may order and direct. *Sec. 42, ibid.*

Encampments.
Sec. 43, *ibid.*

1754. The National Guard shall perform not less than six consecutive days of camp duty in each year, at such time as may be ordered by the commanding general; and the quartermaster-general of the militia, subject to the approval of the commanding general, shall provide, by rental or otherwise, a suitable camp ground for the annual encampment of the militia, make the necessary provisions thereon for the encampment, and provide necessary transportation to and from the same for baggage and supplies. *Sec. 43, ibid.*

---

[1] It was held by the Attorney-General, in an opinion rendered at the request of the Secretary of the Treasury, in May, 1896, that leaves of absence to employees of the Government in Washington granted for the purpose of enabling them to discharge their military duties, were not to be charged to the thirty days allowed them annually for rest and recreation. XXI Opin. Att. Gen., 353; but see VI Compt. Dec., 856.

Use of Washington Barracks. Sec. 44, *ibid.*

1755. National Guard shall have the use of the drill grounds and rifle-range at the Washington Barracks, subject to the approval of the Secretary of War, and the commanding general of the militia shall provide such additional targets and accessories as may be necessary for the use of the militia. *Sec. 44, ibid.*

Suppression of riots, etc. Sec. 45, *ibid.*

1756. When there is in the District of Columbia a tumult, riot, mob, or a body of men acting together by force with attempt to commit a felony; or to offer violence to persons or property, or by force and violence to break and resist the laws, or when such tumult, riot, or mob is threatened, it shall be lawful for the Commissioners of the District of Columbia, or for the United States marshal for the District of Columbia, to call on the commander in chief to aid them in suppressing such violence and enforcing the laws; the commander in chief shall thereupon order out so much and such portion of the militia as he may deem necessary to suppress the same, and no member thereof who shall be thus ordered out by proper authority for any such duty shall be liable to civil or criminal prosecution for any act done in the discharge of his military duty. *Sec. 45, ibid.*

Excuse from duty. Sec. 46, *ibid.*

1757. No officer or soldier of the National Guard, when ordered on duty to aid the civil authorities, or when ordered into the service of the United States in obedience to the call or order of the President, shall be excused from such duty except upon the certificate of the surgeon of his command of physical disability, such certificate to be presented to the commanding general in case of an officer, or to his company commander in case of a soldier. If such officer or soldier fail to furnish such excuse he shall be tried and punished by a court-martial. For absence from any other military duty required or ordered under the provisions of this act the penalty shall be such as may be prescribed by the commanding general or the by-laws of the organization to which the officer or soldier belongs. *Sec. 46, ibid.*

Parade, etc., to have right of way. Sec. 47, *ibid.*

1758. The United States forces or troops, or any portion of the militia, parading, or performing any duty according to law, shall have the right of way in any street or highway through which they may pass: *Provided*, That the carriage of the United States mails, the legitimate functions of the police, and the progress and operations of

Mail, fire department, etc.

fire-engines and fire departments shall not be interfered with thereby. *Sec. 47, ibid.*

Rules for parades and encampments. Sec. 48, *ibid.*

1759. Every commanding officer, when on duty, may ascertain and fix necessary bounds and limits to his parade or encampment. Whoever intrudes within the limits of the parade or encampment after being forbidden, or whoever shall interrupt, molest, or obstruct any officer or soldier while on duty, may be put and kept under guard until the parade, encampment, or duty be concluded; and the commanding officer may turn over such person to any police officer, and said police officer is required to detain him in custody for examination or trial before the police court, and the judge thereof may punish such offense by a fine not exceeding twenty-five dollars. *Sec. 48, ibid.*

Governmental employees. Sec. 49, *ibid.*

1760. All officers and employees of the United States and of the District of Columbia who are members of the National Guard shall be entitled to leave of absence from their respective duties, without loss of pay or time, on all days of any parade or encampment ordered or authorized under the provisions of this act.[1] *Sec. 49, ibid.*

MILITARY TRIBUNALS.

Par.
1761. Courts of inquiry.
1762. Courts-martial.
1763. Trials of enlisted men.
1764. Procedure.
1765. Procedure to conform to that in Army.

Courts of inquiry. Sec. 50, *ibid.*

1761. Courts of inquiry, to consist of not more than three officers, may be ordered by the commanding general, for the purpose of investigating the conduct of any officer, either at his own request or on a complaint or charge of conduct unbecoming an officer. Such court of inquiry shall report the evidence adduced, a statement of facts, and an opinion thereon, when required, to the commanding general, who may, in his discretion, thereupon order a court-martial for the trial of the officer whose conduct has been inquired into. *Sec. 50, ibid.*

Courts-martial. Sec. 51, *ibid.*

1762. General courts-martial for the trial of commissioned officers or enlisted men shall be ordered by the commanding general at such times as the interests of the service may require, and shall consist of not less than five nor more than thirteen officers and a judge-advocate, none of whom shall be of less rank than the accused, when it can be avoided. *Sec. 51, ibid.*

---

[1] Rifle practice is not a parade within the meaning of the act of March 1, 1889 (25 Stat. L., 772). XX Opin. Att. Gen., 669.

Trials of enlisted men. Sec. 52, *ibid.*

1763. For the trial of enlisted men for all minor offenses the commanding officer of each battalion and unattached company shall, at such times as may be necessary, appoint courts-martial. Such battalion and company courts-martial shall consist, for a battalion, of one officer whose rank is not below that of captain; and for a company, of a lieutenant. Such courts shall have power, subject to the approval of the officer ordering the court, to sentence to be reprimanded by said officer in battalion or company orders; or, in case of a company, noncommissioned officers to be reduced to the ranks or to pay such fines as may be imposed and allowed by the regulations or by-laws of the organization to which the accused belongs; and such court may, with the approval of the commanding general, sentence to be reprimanded in general orders or to be dishonorably discharged. *Sec. 52, ibid.*

Proceedings in trials. Sec. 53, *ibid.*

1764. The president of a general court-martial or court of inquiry, and the officer constituting a battalion or company court-martial, shall have power to administer the usual oath to witnesses, and may issue summonses for all witnesses whose attendance at such court may, in his opinion, be necessary, and any officer or soldier failing to serve such summons, and any witness failing to appear and testify when so summoned, shall be liable to trial by court-martial. *Sec. 53, ibid.*

To conform to Army trials. Sec. 54, *ibid.*

1765. In all courts-martial and courts of inquiry the arraignment of the accused, the proceedings, trial, and record shall in all respects conform as nearly as practicable to the regulations for the same in the Army of the United States. *Sec. 54, ibid.*

EXPENSES AND ALLOWANCES.

Par.
1766. General expenses.
1767. Bands.
1768. Subsistence while on duty.
1769. Estimates; disbursements.
1770. Leases, contracts, etc.

General expenses. Sec. 55 *ibid.*

1766. There shall be allowed for the general expenses of the militia such sums as may be necessary for the rental and furnishing of offices for headquarters, stationery, postage, printing and issuing orders, advertising orders, providing necessary blanks for the use of the militia, the cost of storing, caring for, and issuing all public property, and such other contingent expenses, not herein specially provided for, as may be estimated and appropriated for; the accounts for which shall be certified to by the officer receiving the service or property charged for, approved by the commanding general, and paid in the manner provided in section sixty. *Sec. 55, ibid.*

Payment to band, etc. Sec. 56, *ibid.*

1767. During the annual encampment, and on every duty or parade ordered by the commanding general, there shall be allowed and paid for each day of service: To each member of the regularly enlisted band, four dollars; to each member of the regularly enlisted corps of field music, two dollars; to the chief musician, eight dollars, and to the principal musician, six dollars. In event there is no enlisted band or field music, or not a sufficient number of either, the commanding general may authorize the employment of such as he may deem necessary for the occasion. The payments for bands of music and drum corps shall be made in the manner provided in section sixty. *Sec. 56, ibid.*

Subsistence while on duty. Sec. 57, *ibid.*

1768. During the annual encampment, or when ordered on duty to aid the civilian authorities, the National Guard shall be furnished with subsistence stores of the kind, quality, and amount allowed and prescribed by the Army. Such stores shall be issued from the stores and supplies apportioned for the use of the Army, upon the approval and by the direction of the Secretary of War, to the commanding general upon his requisitions for the same. *Sec. 57, ibid.*

Estimates. Sec. 58, *ibid.* Disbursements.

1769. The commanding general shall annually transmit to the Commissioners of the District of Columbia an estimate of the amount of money required for the next ensuing fiscal year to pay the expenses authorized by this act, and the said Commissioners shall include the same in their annual estimates of appropriations for the District; and all money apportioned to pay the expenses authorized by this act shall be disbursed by the Commissioners of the District of Columbia, upon vouchers duly certified and approved by the commanding general, and accounted for by them in the same manner as all other moneys appropriated for the expenses of the District. *Sec. 58, ibid.*

Leases, etc., to be made by Commissioners of the District of Columbia. June 11, 1896, v. 29, p. 412.

1770. Hereafter, all leases and contracts involving expenditures on account of the militia shall be made by the Commissioners of the District of Columbia; and the appropriations for the militia shall be disbursed only upon vouchers duly authorized by the Commissioners, for which they shall be held strictly accountable. And no contract shall be made or liability incurred under appropriations for the militia of the District of Columbia beyond the sums herein appropriated. *Act of June 11, 1896 (29 Stat. L., 412).*

GENERAL PROVISIONS.

Par.
1771. By-laws, etc., restrictions.
1772. Duties of officers.
1773. Discipline, instruction, etc.
1774. Regulations.
1775. Status of members.
1776. Repealing clause.

Regulations. Mar. 1, 1889, s. 59, v. 25, p. 772. Not to be repugnant to law, etc. Company and battalion rules.

1771. Companies, battalions, or regiments may adopt constitutional articles of agreement or by-laws, subject to the approval of the commander in chief, for the government of matters relating to the civic affairs of their respective organizations, the regulation of fines for nonperformance of duty, and the determination of causes upon which excuses from fines may be based: *Provided, however,* That such articles or rules shall not be repugnant to law or the regulations for the government of the militia: *And provided further,* That the articles or rules adopted by any company or battalion shall not be repugnant to the articles or rules adopted for the general government of the regiment or battalion to which it belongs. Certified copies of such articles or rules, with like copies of all alterations, as finally approved by the commanding general, shall be deposited in the office of the Adjutant-General. *Sec. 59, act of March 1, 1889 (25 Stat. L., 772).*

Duties of officers. Sec. 60, *ibid.*

1772. The departmental and military duties of the officers provided for in this act shall be correlative with those discharged by similarly designated officers in the Army of the United States. *Sec. 60, ibid.*

Discipline. Sec. 61, *ibid.*

1773. The system of discipline and field exercise ordered to be observed by the Army of the United States, or such other system as may hereafter be directed for the militia by laws of the United States, shall be observed by the National Guard. *Sec. 61, ibid.*

Commanding general to make regulations. Sec. 62, *ibid.*

1774. The commanding general, subject to the approval of the Commander in Chief, is authorized to make and publish regulations for the government of the militia in all matters not specifically provided for by law, conforming the same to the practice and regulations of the Army so far as they may be applicable. *Sec. 62, ibid.*

Status of members.

1775. Members of the National Guard of the District of Columbia who receive compensation for their services as such shall not be held or construed to be officers of the United States, or persons holding any place of trust or profit, or discharging any official function under or in connection with any Executive Department of the Government of the United States within the provision of section fifty-four hundred and ninety-eight of the Revised Statutes of the United States. *Act of March 1, 1901.*

1776. The act "more effectually to provide for the organization of the militia of the District of Columbia," approved March third, eighteen hundred and three, is hereby repealed. *Sec. 63, act of March 1, 1889 (25 Stat. L., 772).*

Repeal.
V. 2, p. 215.
R. S. D. C., ch 37, p. 138.
Sec. 63, *ibid.*

THE TERRITORIAL MILITIA—ISSUES OF ARMS TO TERRITORIES.

Par.
1777. Governor to command militia.
1778. Election of general officers.
1779. Appointment of commissioned officers.
Par.
1780. Issues of arms to Territories.
1781. The same.

1777. The executive power of each Territory shall be vested in a governor, who shall hold his office for four years, and until his successor is appointed and qualified, unless sooner removed by the President. He shall reside in the Territory for which he is appointed, and shall be commander in chief of the militia thereof. He may grant pardons and reprieves, and remit fines and forfeitures, for offenses against the laws of the Territory for which he is appointed, and respites for offenses against the laws of the United States, till the decision of the President can be made known thereon. He shall commission all officers who are appointed under the laws of such Territory, and shall take care that the laws thereof be faithfully executed.

The Territorial militia.
July 19, 1876, c. 212, v. 19, p. 91.
N. Mex., Sept. 9, 1850, c. 49, s. 3, v. 9, p. 447; Utah, Sept. 9, 1850, c. 51, s. 2, v. 9, p. 453; Wash., Mar. 2, 1853, c. 90, s. 2, v. 10, p. 173; Colo., Feb. 28, 1861, c. 59, s. 2, v. 12, p. 172; Dak., Mar. 2, 1861, c. 86, s. 2, v. 12, p. 239; Ariz., Feb. 24, 1863, c. 56, s. 2, v. 12, p. 665; Idaho, Mar. 3, 1863, c. 117, s. 2, v. 12, p. 809; Mont., May 26, 1864, c. 95, s. 2, v. 13, p. 86; Wyo., July 25, 1868, c. 235, s. 2, v. 15, p. 178. American Ins. Co. *v.* 356 Bales of Cotton, 1 Pet., 511. **Sec. 1841, R. S.**

1778. Justices of the peace and all general officers of the militia in the several Territories shall be elected by the people in such manner as the respective legislatures may provide by law.

Election of justices of the peace and militia officers.
June 15, 1844, c. 69, s. 2, v. 5, p. 671.
Sec. 1856, R. S.

1779. All township, district, and county officers, except justices of the peace and general officers of the militia, shall be appointed or elected in such manner as may be provided by the governor and legislative assembly of each Territory; and all other officers not herein otherwise provided for the governor shall nominate, and by and with the advice and consent of the legislative council of each Territory shall appoint; but, in the first instance, where a new Territory is hereafter created by Congress, the governor alone may appoint all the officers referred to in this and the preceding section and assign them to their respective townships, districts, and counties; and the officers so appointed shall hold their offices until the end of the first session of the legislative assembly.

Other officers.
N. Mex., Sept. 9, 1850, c. 49, s. 8, v. 9, p. 449; Utah, Sept. 9, 1850, c. 51, s. 7, v. 9, p. 455; Wash., Mar. 2, 1853, c. 90, s. 7, v. 10, p. 175; Colo., Feb. 28, 1861, c. 59, s. 7, v. 12, p. 174; Ariz., Feb. 24, 1863, c. 56, s. 2, v. 12. p. 665; Dak., Mar. 2, 1861, c. 86, s. 7, v. 12, p. 241; Idaho, Mar. 3, 1863, c. 117, s. 7, v. 12, p. 811; Mont., May 26, 1864, c. 95, s. 7, v. 13, p. 88; Wyo., July 25, 1868, c. 235, s. 7, v. 17, p. 180.
Sec. 1857, R. S.

Arms to be issued to Territories and border States.
Joint Res. No. 13, July 3, 1876, v. 19, p. 214; Joint Res. No. 7, Mar. 3, 1877, v. 19, p. 410; May 16, 1878, v. 20, p. 61.

1780. That the Secretary of War is hereby authorized to cause to be issued to the Territories, and the States bordering thereon, such arms as he may deem necessary for their protection, not to exceed one thousand to said States and Territories each, and ammunition for the same, not to exceed fifty ball cartridges for each arm: *Provided*, That such issues shall be only from arms owned by the Government which have been superseded and no longer issued to the Army: *Provided*, *however*, That said arms shall be issued only in the following manner, and upon the following conditions, namely, upon the requisition of the governors of said States or Territories showing the absolute necessity of arms for the protection of the citizens and their property against Indian raids into said States or Territories, also that militia companies are regularly organized and under control of the governors of said States or Territories to whom said arms are to be issued, and that said governor or governors shall give a good and sufficient bond for the return of said arms or payment for the same at such time as the Secretary of War may designate: *Provided*, That the quota to the States now authorized by law shall not hereby be diminished.[1] *Joint Res. No. 13*, *July 3*, *1876* (*19 Stat. L.*, *214*).

Additional arms, etc., for Territories.
Joint Res. No. 26, June 7, 1878, v. 20, p. 252.

1781. That the Secretary of War is hereby authorized to cause to be issued to each of the Territories of the United States (in addition to arms and ammunition the issue of which has been heretofore provided for), such arms not to exceed one thousand in number as he may deem necessary, and ammunition for the same not to exceed fifty ball cartridges for each arm: *Provided*, That such issue shall be only from arms owned by the Government of the United States, which have been superseded and no longer issued to the Army: *And provided further*, That said arms shall be issued only in the following manner, and upon the following conditions, namely, upon the requisition of the governors of said Territories showing the absolute necessity for arms for the protection of citizens and their property against hostile Indians within or of Indian raids into such Territories: *And provided further*, That the said governor or governors of said Territories to whom the said arms may be issued shall give good and sufficient bond or bonds for the return of said arms, or payment therefor, at such time as the Secretary of War may designate, as now provided for by law. *Joint Res. No. 26*, *June 7*, *1878* (*20 Stat. L.*, *252*).

---

[1] Superseded as to the Territories by joint resolution No. 26, June 7, 1878 (20 Stat. L., 252), paragraph 1781, *post.* See also paragraphs 1693 and 1694, *ante.*

CHAPTER XXXVI.

MILITARY TRIBUNALS.

COURTS-MARTIAL, MILITARY COMMISSIONS, COURTS OF INQUIRY.

Par.
1782–1788. Arrest and confinement; charges and specifications.
1789–1794. General courts-martial.
1795–1797. Jurisdiction.
1798–1800. Judge-advocates; counsel.
1801. Reporters and interpreters.
1802. Challenges.
1803. Continuances.
1804, 1805. Oaths.
1806. Behavior of members.
1807. Contempts of court.
1808. The arraignment.
1809–1813. Witnesses.
Par.
1814–1827. Evidence.
1828. Depositions.
1829. The finding.
1830. Closed sessions.
1831–1837. Sentences.
1838. Limits of punishment.
1839–1841. The record.
1842. Revision; proceedings.
1843–1850. The reviewing authority.
1851–1861. The inferior courts-martial.
1862. Military commissions.
1863–1869. Courts of inquiry.

ARREST AND CONFINEMENT; CHARGES AND SPECIFICATIONS.

Par.
1782. Arrest of officers.
1783. Confinement of enlisted men.
1784, 1785. Limitation on arrest or confinement.
Par.
1786. Written statement of offense.
1787. Reports of prisoners.
1788. Release without authority escape, etc.

Arrest of officers.
65 Art. War.

1782. Officers charged with crime shall be arrested and confined in their barracks, quarters, or tents, and deprived of their swords by the commanding officer.[1] And any officer who leaves his confinement before he is set at liberty by his commanding officer shall be dismissed from the service.[2] *Sixty-fifth Article of War.*

---

[1] *Arrests, how executed.*—The manner in which the arrest, or personal attachment of the alleged offender, if an officer, shall be executed, is not described in the article any further than it shall be done by the hand or authority of the commanding officer; neither is it explained by the article what the degree of the personal restraint shall be imposed by such arrest. Both of these must rest on the usages and customs of war obtaining in the several cases. Samuels, Military Law, 640.

[2] An officer may be put in arrest by a verbal or written order or communication from an authorized superior, advising him that he is placed in arrest or will consider himself in arrest or in terms to that effect. The reason for the arrest need not be specified. At the same time he is usually required to surrender his sword, though this formality may be dispensed with. But an arrest, though an almost invariable, is not an essential preliminary to a military trial. To give the court jurisdiction it

[Footnote ²—Continued.]

is not necessary that the accused should have been arrested; it is sufficient if he voluntarily, or in obedience to an order directing him to do so, appears and submits himself to trial. So neither the fact that an accused has not been formally arrested or arrested at all, nor the fact that having been once arrested and released from arrest he has not been rearrested before trial, can be pleaded in bar of trial or constitute any ground of exception to the validity of the proceedings or sentence. An officer is in no case entitled to demand to be arrested. Dig. Opin. J. A. G., par. 502. See, also, MANUAL FOR COURTS-MARTIAL, pp. 4–8.

The term "crime" is here employed in a general sense, referring to offenses of a military character, as well as to those of a civil character which are cognizable by court-martial. An offense in violation of this article is only committed when an officer, confined in "close arrest" to his quarters, leaves the same without authority. A breach of a mere formal arrest, or of any arrest not accompanied by confinement to quarters, would be an offense, not within this article, but under article 62. Ibid., par. 170.

Except in the class of cases indicated in article 24, only "commanding officers" can place commissioned officers in arrest. The commanding officer thus authorized is the commander of the regiment, company, detachment, post, department, etc., in which the officer is serving. Where a company is included in a post command, the commander of the post rather than the company commander is the proper officer to make the arrest of a subaltern of the company. Ibid., par. 503.

An officer is not privileged from arrest by virtue of being at the time a member of a general court-martial. But an arrest of an officer while actually engaged upon court-martial duty should, if possible, be avoided. Dig. Opin. J. A. G., par. 507.

Status of arrest.—Although the martial law makes no mention of any difference in the nature of arrests in order to trial, a difference is established by the custom of the Army, according to the degree or measure of the crime. An officer accused of a capital crime, or any offense of which the penalty is so severe as to afford a natural temptation to escape from justice, ought to be detained in a state of confinement as secure as the closest civil imprisonment. If the offense is of a lighter nature the presumption is that the officer, whose character is thus impeached must be solicitous to obtain a judicial investigation of his conduct; and he is therefore generally allowed to be in arrest at large—that is, to walk about, within certain limits, without his sword, on his word of honor to await the issue of his trial, or his enlargement by the proper authority. The degree and measure of the arrest must, however, be entirely at the discretion of the commanding officer, who will in all cases regulate his conduct by the particular circumstances and by the dictates of propriety and humanity. Tytler, p. 202. Besides the presumption mentioned by this writer in favor of an officer being allowed to remain under a liberal restraint, is the positive security of his commission. This confers upon him a beneficial office, and would be subject to forfeiture on his withdrawing himself from the reach of military justice. This affords one great reason for the distinction taken between a commissioned officer and soldier in the circumstances of the arrest. Samuels, Military Law, 641.

The status of being in arrest is inconsistent with the performing of military duty. Placing an arrested officer or soldier on duty terminates his arrest. Releasing a soldier from arrest and requiring him to perform military duty after his trial and while he is awaiting the promulgation of his sentence, can be justified only by an extraordinary exigency of the service. Dig. Opin. J. A. G., par. 505.

It is clearly to be inferred from paragraphs 998–999 of the Army Regulations, 1901, that unless other limits are specially assigned him, an officer in arrest must confine himself to his quarters. It is generally understood, indeed, that he can go to the mess house or other place of necessary resort. It is not unusual, however, for the commander, in the order of arrest, to state certain limits within which the officer is to be restricted, and except in aggravated cases these are ordinarily the limits of the post where he is stationed or held. An officer or soldier, though detained in close arrest, should be permitted to receive such visits from his counsel, witnesses, etc., as may be necessary to enable him to prepare his defense. Ibid., par. 504.

An officer under arrest is not disqualified to prefer charges. Ibid., par. 508.

The imposition of an arrest affects in no manner the right of an officer or soldier to receive the pay and allowances of his rank. Except in a case of a deserter (see par. 140, Army Regulations, 1901) no legal inhibition exists to paying a soldier while in arrest—either before trial or while awaiting sentence—his regular pay and emoluments. Ibid., par. 509.

An arrest imposed by the Secretary of the Navy upon a chief of bureau in the Navy Department in the following terms, "You are placed under arrest, and you will confine yourself to the limits of the city of Washington," *held* not to constitute a restraint

1783. Soldiers charged with crimes[1] shall be confined until tried by court-martial or released by proper authority.[2] *Sixty-sixth Article of War.*

Confinement of enlisted men.
66 Art. of War.

---

upon liberty sufficient to justify the use of the writ of *habeas corpus*." Wales *v.* Whitney, 114 U. S., 564.

[2] *Breach of arrest.*—An offense in violation of this article is only committed when an officer confined in "close arrest" to his quarters leaves the same without authority. A breach of a mere formal arrest, or of any arrest not accompanied by confinement to quarters, would be an offense not within this article, but under article 62. (*a*) Dig. Opin. J. A. G., par. 170.

Simply disobeying an order to proceed and report in arrest to a certain commander, *held* not an offense chargeable under this article. Ibid., par. 171.

Where an officer in close arrest was permitted by his commanding officer to leave temporarily his confinement, *held* that his delaying his return for a brief period beyond the time fixed therefor did not properly constitute an offense under this article. Ibid., par. 172.

Though any unauthorized leaving of his confinement by an officer in close arrest is strictly a violation of the article, it would seem, in view of the severe mandatory punishment prescribed, that an officer should not in general be brought to trial under the same unless his act was of a reckless or deliberately insubordinate character. Ibid., par. 173.

It is no defense to a charge of breach of arrest in violation of this article that the accused is innocent of the offense for which he was arrested. (*b*) It *is* a defense, however, that subsequently to the original confinement the accused has been put on duty, or allowed to go on duty, provided that before the breach assigned he has not been duly rearrested and reconfined. (*c*)

The requirement of this article, that an offender "shall be *dismissed*," is held to be exclusive of any other punishment. A sentence of dismissal, with forfeiture of pay, is unauthorized and inoperative as to the forfeiture, and as to this should be disapproved. Ibid., par. 174.

[1] The word "*crimes*," as used in this article, is construed to mean serious military offenses. So that a soldier will not properly be "confined" where not charged with one of the more serious of the military offenses—in other words, where charged only with an offense of a minor character. Dig. Opin. J. A. G., par. 176.

[2] Soldiers held in military arrest, while they may be subjected to such restraint as may be necessary to prevent their escaping or committing violence, can not legally be subjected to any *punishment*. The imposition of punishment upon soldiers while thus detained has been on several occasions emphatically denounced by department commanders. (*d*) Ibid., par. 175.

A soldier while confined in arrest should not be fettered or ironed except where such extreme means are necessary to restrain him from violence, or there is good reason to believe that he will attempt an escape and he can not otherwise be securely held. Ibid., 511. See, also, par. 1010, A. R., 1901.

Under the regulations (par. 1004, A. R., 1901) soldiers in confinement awaiting action on the proceedings of their trials are assimilated to those awaiting trial, and both classes may, at the discretion of the commanding officer, be employed, separately from prisoners undergoing sentence, upon such labor as is habitually required of soldiers. More severe or other labor would not be legal, nor would labor with a police party consisting in whole or in part of men under sentence, however slight their sentence might be. (*e*) A soldier in arrest in quarters may be required to do cleaning or police work about his quarters which otherwise other soldiers would have to do for him. See, also, MANUAL FOR COURTS-MARTIAL, pp. 4–8.

The fact that a soldier has been held in arrest for an unreasonably protracted period before trial, or while awaiting the promulgation of his sentence, is a good ground for a mitigation of his punishment. Dig. Opin. J. A. G., par. 506.

---

a In all cases of "constructive" breach of arrest, such as exercising military authority, wearing sword, etc., the accused can not be charged under the sixty-fifth article, as the punishment is mandatory and authorizes the sentence of dismissal only in case of "leaving his confinement." Ives, Mil. Law, 66.

b Hough, Practice, 494.

c Hough, Precedents, 19.

d See, for example, the remarks of such commanders in G. O. 23, Department of the East, 1863; G. O. 26, Department of California, 1866; G. O. 23, Department of the Lakes, 1870; G. O. 106, Department of Dakota, 1871. And compare remarks of Justice Story in Steere *v.* Filed, 2 Mason, 516.

e See G. O. 44, Division of the Atlantic, 1889.

Limitation on confinement. 70 Art. of War. **1784.** No officer or soldier put in arrest shall be continued in confinement more than eight days, or until such time as a court-martial can be assembled.[1] *Seventieth Article of War.*

The same. 71 Art. of War. **1785.** When an officer is put under arrest for the purpose of trial, except at remote military posts or stations, the officer by whose order he is arrested shall see that a copy of the charges[2] on which he is to be tried is served upon

---

[1] One might be inclined to think, in reading the concluding branch of the article, that the words "until such time as a court-martial can be conveniently assembled," intended some time within the eight days mentioned in the preceding member of the sentence. But military usage is against such supposition. Samuels, 642. Referring to this passage, Tytler observes that "the latter part of the clause evidently allows a latitude which is capable of being abused; but as in a free country there is no wrong without a remedy, the military law prescribes a mode of redress for all officers or soldiers who conceive themselves injured by the commanding officer, which must always be sufficient for the restraint of every act of material injustice or oppression." Tytler, p. 204.

Detaining soldiers in arrest for long and unreasonable periods, when it is practicable to bring them to trial, is arbitrary and oppressive, and in contravention both of the letter and spirit of this article. Whether the delay in any case is to be regarded as so far unreasonable as properly to subject the commander responsible therefor to military charges or a civil action must depend upon the circumstances of the situation and the exigencies of the service at the time.(a) Dig. Opin. J. A. G., par. 177.

To give a court-martial jurisdiction of the person of an officer or soldier charged with a military offense, it is not necessary that he shall have been subjected to any particular form of arrest, or that he shall have been arrested at all, or even ordered to attend the court. Here, as before a civil tribunal, his voluntary appearance and submission for trial is all that is essential. Ibid., par. 1035.

[2] CHARGES AND SPECIFICATIONS.

Charges and specifications.—In our practice, unlike that of the English courts-martial, a military charge properly consists of two parts—the technical "charge" and the "specification." The former designates by its name, particular or general, the alleged offense; the latter sets forth the facts supposed to constitute such offense. An accusation against an officer or soldier not thus separated in form would be irregular and exceptional in our practice, and, till amended, would not be accepted as a proper basis for proceedings under the code. Dig. Opin. J. A. G., par. 694, See also MANUAL FOR COURTS-MARTIAL, pp. 15–20.

Framing of charges.—The same particularity is not called for in military charges which is required in indictments.(b) The essentials of a charge are: (1) That it shall be laid under the proper article of war or other statute; (2) that it shall set forth (in the specification) facts sufficient substantially to constitute the particular offense. These essentials being observed, the simpler and less encumbered with verbiage and technical terms the charge is, the better, provided it be expressed in clear and intelligible English. However inartificial a pleading may be, it will properly be held sufficient as a legal basis for a trial and sentence, provided that the charge and specification, taken together, amount to a statement of a military offense either under a specific article or under the general article, No. 62. Ibid., par. 695.

There can be no legal objection to charging an offense as a "violation of" a particular article of war, although, in general, it will be preferable to charge it by its

---

[a] Compare Blake's case, 2 Maule and Selden, 428; Bailey *v.* Warden, 4 ibid., 400.

[b] In regard to the proper form for a military charge, Attorney-General Cushing (VII Opins., 603) says: "There is no one of exclusive rigor and necessity in which to state military accusations." He adds further: "Trials by court-martial are governed by the nature of the service, which demands intelligible precision of language, but regards the substance of things rather than their forms. * * * The most bald statement of the facts alleged as constituting the offense, provided the legal offense itself be distinctively and accurately described in such terms of precision as the rules of military jurisprudence require, will be tenable in court-martial proceedings, and will be adequate groundwork of conviction and sentence." So it is observed by Attorney-General Wirt (I Opins., 286) that "all that is necessary" in a military charge is that it be "sufficiently clear to inform the accused of the military offense for which he is to be tried, and to enable him to prepare his defense." And see Tytler, 209; Kennedy, 69. It is ably remarked by Gould (Pleading, p. 4) that "all pleading is essentially a logical process;" and that, in analyzing a correct pleading, "if we take into view, with what is expressed, what is necessarily supposed or implied, we shall find in it the elements of a good syllogism." But it can hardly be expected that military charges in general will stand this test.

[Footnote²—Continued.]

familiar and received name—as "drunkenness on duty," "misbehavior before the enemy," "desertion," etc. Ibid., 225, par. 3.

Where an offense is clearly defined in a specific article, it is irregular and improper to charge it under another specific article. So, where the article in which the offense is defined makes it punishable with a specific punishment to the exclusion of any other, it is error to charge it under an article, such as the sixty-second, which leaves the punishment to the discretion of the court. On the other hand, it is equally erroneous to charge under a specific article, making mandatory a particular punishment, an offense properly charged only under article 62. Ibid., par. 697.

Where a specific offense is charged (i. e., an offense made punishable by an article other than the general—sixty-second—article) and the specification does not state facts constituting such specific offense, the pleading will be insufficient as a pleading of that offense. Legal effect may, however, be given to a pleading if the charge and specification, taken together, amount to an allegation of an offense cognizable by a court-martial under article 62. And in all cases—whatever be the form of the charge or specification—if the two are not inconsistent, and, taken together, make out an averment of a neglect or disorder punishable under this general article, the pleading will be sufficient in law and will constitute a legal basis for a conviction and sentence. Ibid., par. 699.

It is illogical and faulty pleading to charge a secondary offense in lieu of the actual or principal offense, of which that charged was merely a consequence or incident. But where the act committed involves several distinct offenses the party may properly be arraigned upon the same number of separate charges. And all the offenses with which an officer or soldier may be at one time chargeable should, if practicable (and if the same are sufficiently grave), be charged and brought to trial together. Undue multiplication, however, of charges, or forms of charge, is to be avoided; thus charges should not in general be added for minor offenses which were simply acts included in and going to make up graver offenses duly charged. It may, indeed, sometimes be expedient, where the offenses are slight in themselves, and it is deemed desirable to exhibit a continued course of conduct, to wait before preferring charges till a series of similar acts have been committed, provided the period be not unreasonably prolonged; but in general charges should be preferred and brought to trial immediately or presently upon the commission of the offenses. Anything like an accumulation or saving up of charges through a hostile animus on the part of the accuser is discountenanced by the sentiment of the service.(*a*) Ibid., pars. 700 and 701.

The prosecution is at liberty to charge an act under two or more forms where it is doubtful under which it will more properly be brought by the testimony.(*b*) In the military practice the accused is not entitled to call upon the prosecution to "elect" under which charge it will proceed in such or, indeed, any case. Ibid., par. 702.

Where there are two sets of charges against an accused they should, if practicable, be consolidated and one trial be had upon the whole, instead of two trials, one upon each set. But after the accused has been arraigned upon certain charges, and has pleaded thereto, and the trial on the same has been entered upon, new and additional charges, which the accused has had no notice to defend, can not be introduced or the accused required to plead thereto. Such charges should be made the subject of a separate trial, upon which the accused may be enabled properly to exercise the right of challenge to the court and effectively to plead and defend. Ibid., par. 703.

Such loose and indefinite forms of charge as "fraud," "worthlessness," "inefficiency," "habitual drunkenness," and the like will be avoided by good pleaders. Such charges, indeed, in connection with specifications setting forth actual military neglects or disorders (not properly chargeable under specific articles), may be sustained as equivalent to charges of "conduct to the prejudice of good order and military discipline." But a charge of "worthlessness," with specifications setting forth repeated instances of arrests, confinements in the guardhouse, or trials and convictions for slight offenses of the accused, *held* an insufficient pleading; such instances not constituting military offenses, but merely the punishments or penal consequences of such offenses. (What is really called for in such a case is a discharge of the soldier under the fourth article of war.) A specification averring a general incapacity induced by habitual intoxication does not set forth a military offense. The accused in such a case should be charged with the acts of drunkenness committed as separate and distinct instances of offense.(*c*) Ibid., par. 704.

A charge expressed in too general terms is faulty and imperfect; the accused is entitled to know for what particular act he is called to account. Thus a specifica-

---

[a] See G. C. M. O. 71, Headquarters of the Army, 1879.
[b] "For the purpose of meeting the evidence as it may transpire." State *v.* Bell, 27 Md., 675.
[c] See G. O. 11, War Department, 1873.

[Footnote 2—Continued.]

tion under article 62, in a case of an officer, which set forth, not a specific act of offense, but an habitual course of conduct as incapacitating the accused for service or for the performance of his proper duty, *held* seriously defective and subject to be stricken out on motion. For such conduct, indeed, the remedy is not by charge and trial, but by retirement under section 1252, Revised Statutes. Ibid., par. 726.

A charge expressed in the alternative—either under article 17 or article 60—is irregular and defective, and, upon motion, may be stricken out or required to be amended. Ibid., par. 727.

The specification should be appropriate to the charge. A charge of "conduct to the prejudice of good order and military discipline," with a specification setting forth a violation of a specific article, is an irregular and defective pleading, and so of course is a charge of a specific offense with a specification describing not that but a different specific offense, or a simple disorder or neglect of duty. Ibid., par. 705.

Where a specification to a charge preferred by a superior against an inferior officer, instead of referring to the former in the third person, alleged that the accused addressed abusive language to "*me*," and committed an assault upon "*me*," without naming or otherwise indicating the subject of the abuse or assault, *Held* that such a form, though supported by some of the English precedents, was not sanctioned by our practice, and that, on objection being made to the same by the accused, the court would properly either require that the specification be amended, or that, in incorporating the charge in the record, the name of the preferring officer be added. Ibid., par. 707.

A specification, in alleging the violation of an order which has been given in writing, or of any written obligation—as an oath of allegiance, parole, etc.—should preferably set forth the writing verbatim, or at least state fully its substance, and then clearly detail the act or acts which constituted its supposed violation. Ibid., par. 709.

Allegations of time and place.—The time and place of the commission of the offense charged should properly be averred in the specification in order that it may appear that the offense was committed within the period of limitation fixed by the one hundred and third article, and in order to enable the accused to understand what particular act or omission he is called upon to defend.(*a*) A reasonably exact allegation of the time is also important in some cases—especially those of desertion and absence without leave—in order that the accused, if subsequently brought to trial for the same offense, or, what is the same thing in law, for an offense included in the original offense, may be enabled (by an exhibition of the record) properly to plead a former acquittal or conviction of that offense. Ibid., par. 710.

Where the exact time or place of the commission of the offense is not known it is frequently preferable to allege it as having occurred "on or about" a certain date or time, or "at or near" a certain locality, rather than to aver it as committed on a particular day or between two specified days, or at a particular place. There is no defined construction to be placed upon the words "on or about" as used in the allegation of time in a specification. The phrase can not be said to cover any precise number of days or latitude in time. It is ordinarily used in military pleading for the purpose of indicating some period, as nearly as can be ascertained and set forth, at or during which the offenses charged are believed to have been committed, in cases where the exact day can not well be named. And the same is to be said as to use of the words "at or near" in connection with the averment of place. These terms "on or about" and "at or near" are, however, not infrequently (though unnecessarily) employed in practice where the exact time or place is known and can readily be alleged. Ibid., par. 711.

The allegation of time in a specification should be as nearly defined as the facts will permit; but where the act or acts charged extended over a considerable space of time it may be necessary to cover such period in the allegation. Thus, allegations of "from March to September, 1887," and "from May to October, 1888," have been countenanced in a case in which the accused was charged with the neglect of a duty the performance of which was thus continuous. See G. C. M. O. 21, of 1889. Ibid., par. 729.

The same exactness in the averment of time is in general scarcely required where the offense charged is one of omission as where it is one of the commission of a specific act. It is sufficient in the former case to allege that the offense occurred between certain named dates not unreasonably separated. So, an offense of commission, which probably was not completed, or may not have been completed on any particular day, may be similarly charged. Thus *held* that the allegations of time

---

[a] As to the latitude allowable in the allegation of time in military pleadings, compare I Opin. Att. Gen., 295, 296. In the civil practice, "nothing is better settled than that proof of guilt is not confined to the day mentioned in the indictment. It may extend back to any period previous to the finding of the bill and within the statutory limit for prosecuting the offense." McBryde *v.* State, 34 Ga., 203.

[Footnote [2]—Continued.]

and place were sufficient in a specification in which it was set forth that the offense charged (which consisted of an improper disposition of public property) was committed by the accused "while en route between Austin, Tex., and Waco, Tex., between the 5th and 25th days of May, 1867." Ibid., par. 712.

But where it was alleged in a specification that the accused was drunk on duty at some time or times during a period of seventy days, *held* that the specification did not give sufficient notice to the accused of the specific offense which he was required to defend, and was therefore uncertain and insufficient. [a] Ibid.

Where a specification alleged that the accused was absent without leave at various times between two dates, twenty days apart, *held* that the same was defective and subject to exception as being *double*, each such absence being a substantive and distinct offense. [b] X, 471. But where the specification to a charge of violation of the sixtieth article alleged the presentation by the accused of a fraudulent claim for rations furnished for recruits and also for lodgings furnished for the same recruits at the same time, *held* that the specification related to one transaction and was not therefore to be necessarily regarded as *double* or defective, in view of the liberal rules of pleading applicable to military charges. Ibid., par. 708.

Where time or place is omitted to be averred, or is averred without sufficient definiteness, and the defect is excepted to by the accused on being called upon to plead, the court will probably direct that an amendment be made. But where in either such case no objection is interposed by the accused, the proceedings will be sufficient in law provided the time and place of the offense can be made out with reasonable certainty from the testimony in connection with the specifications. If otherwise, the proceedings will, where practicable, properly be returned to the court for correction, or where this can not be done, will, in general, probably be disapproved. And where the offense is alleged to have been committed on a particular day, and the evidence shows that it was committed on quite a different day, in such case, provided time is not of the essence of the offense, and the specific act charged is sufficiently identified by the other testimony, the variance between the allegation and the proof will not constitute a fatal defect, and need not induce a disapproval of the sentence where there has been a conviction. A return, however, of the record to the court for correction, if practicable, would well be resorted to by the reviewing officer before taking final action. Ibid., par. 713.

Matter of evidence in pleading.—While it is in general irregular to plead matter of evidence, there is no objection to noting in brief in the specification the immediate result or effect of the act charged, as a circumstance of description illustrating the character and extent of the offense committed. Thus, while a homicide, if amounting to murder, and capital under section 5339, Revised Statutes, or by the law of the State, etc., can not as such be made the subject of a military charge in time of peace (see sixty-second article), yet a capital homicide, where it has been committed in connection with or as a consequence of a specific military offense charged against the accused, as, for example, "mutiny," or "offering violence to a superior officer," may properly be stated in the conclusion of the specification as matter of aggravation and as indicating the animus of the accused or the amount of force employed. Ibid., par. 714.

Joint charges.—Properly to warrant the joining of several persons in the same charge and the bringing them to trial together thereon, the offense must be such as requires for its commission a combination of action and must have been committed by the accused in concert or in pursuance of a common intent. The mere fact of their committing the same offense together and at the same time, although material as going to show concert, does not necessarily establish it. Thus the fact that several soldiers have absented themselves together without leave will not, in the absence of evidence indicating a conspiracy or concert of action, justify their being arraigned together on a common charge, for they may merely have been availing themselves of the same convenient opportunity for leaving their station. Ibid., par. 715.

By whom preferred.—Military charges, though commonly originating with military persons, may be initiated by civilians; indeed, it is but performing a public duty for a civilian, who becomes cognizant of a serious offense committed by an officer or soldier, to bring it to the attention of the proper commander. So a charge may originate with an enlisted man. But, by the usage of the service, all military charges should be formally preferred by, i. e., authenticated by the signature of, a commissioned officer. Charges proceeding from a person outside the Army, and based

---

[a] Compare cases in G. O. 193, Army of the Potomac, 1862; G. O. 98, Department of New Mexico, 1862.

[b] In the military, as in the civil, practice, *double* pleading—i. e., specifications setting forth two (or more) distinct offenses (especially when chargeable under different articles of war) are properly condemned, and in sundry cases the conviction and sentence have been disapproved on account of the *duplicity* in law of the pleadings. See G. C. M. O. 80, War Department, 1875; G. O. 3, 83, Department of the Missouri, 1863; id. 49, Department of the Ohio, 1864.

[Footnote [2]—Continued.]

upon testimony not in the possession or knowledge of the military authorities, should, in general, be required to be sustained by affidavits or other reliable evidence, as a condition to their being adopted. Ibid., par. 716.

Any officer may prefer charges; an officer is not disqualified from preferring charges by the fact that he is himself under charges or in arrest. Charges should be preferred to the authority empowered to convene the court for their trial. The signing of charges, like orders, with the name of an officer, adding "by the order of" his commander, is unusual and objectionable. Charges, where not signed voluntarily by the officer by whom they are preferred, are, in practice, usually subscribed by the judge-advocate of the court. Ibid., par. 717.

In cases where charges preferred against an officer are apparently susceptible of a reasonable explanation, it is not unusual, especially where the charges are preferred by an inferior against a superior, to afford the officer charged an opportunity to make explanation before it be determined whether to bring him to trial. Ibid., par. 718.

It is a reprehensible practice to allow charges to lie long dormant before being preferred. Charges should not be delayed, but should be brought to trial as soon as practicable and while the evidence is fresh. A delay of five months remarked upon as prejudicial to the administration of justice and unfair to the accused. Ibid., par. 722.

Commanding officers are not required to bring every dereliction of duty before a court for trial, but will endeavor to prevent their recurrence by admonitions, withholding of privileges, and taking such steps as may be necessary to enforce their orders. Par. 1027, A. R., 1901.

Charges, though preferred in the office of the Judge-Advocate-General, are not to be signed by him. If not signed by the officer actually preferring them, they will properly be authenticated by the signature of the acting judge-advocate of the department, or, preferably, by the judge-advocate of the court. Dig. Opin. J. A. G., par. 723.

An objection that a charge is not signed should be taken at the arraignment, when the omission may be supplied by the judge-advocate affixing his signature. By pleading the general issue the accused waives the objection. Ibid., par. 724.

But to be taken cognizance of by the court, it is not essential that a charge should be signed by any officer. If, though not so signed, it be duly officially transmitted by the convening commander, or other competent superior authority, to the court, either directly or through the judge-advocate "for trial," or "for the action of the court," or in terms to such effect, it is sufficiently authenticated for the purposes of trial, and trial upon it may be proceeded with by arraignment thereon of the accused. Ibid., par. 725.

Reference for trial.—In general, charges can regularly and properly be ordered to be tried, or transmitted for trial to the court, only by the authority of the officer convening the court or that of his superior. An inferior to the convening officer can not properly refer charges to the court for trial except under some specific or general authority received from that officer. [a] The mere fact, however, that a court has proceeded to the trial of charges, referred to it without due authority by a commander inferior to the one who convened the court, can not affect the legality of the finding or sentence in the case. Ibid., par. 719.

Withdrawal of charges.—A withdrawal of charges constitutes no legal bar to their being subsequently revived and repreferred. Charges, however, once formally withdrawn will not in general properly be revived except upon new material evidence being obtained. Charges once accepted as a sufficient basis for action, by the commander competent to convene a court for their trial, can not properly be withdrawn except by his authority. Ibid., par. 720.

Amendment of charges.—How far charges may be amended by the judge-advocate before the organization of the court depends mainly upon his authority, general or special, to make amendments. After the arraignment, amendments of form may always be made, with the assent of the accused or by the direction of the court; and so may slight amendments of substance not so modifying the pleading as to make it a charge of a new and distinct offense. An amendment so substantial as materially to modify the "matter" before the court, will not in general be authorized (see eighty-fourth article), and any amendment whatever of substance should be allowed by the court with caution and subject to the right of the accused to apply for a continuance (see ninety-third article). Ibid., par. 720, note 1.

The judge-advocate is not unfrequently directed to prepare or reframe charges;

---

[a] This rule, though not always insisted upon in practice, has been repeatedly enjoined in express terms by department commanders. See, for example, G. O. 67, Department of Arkansas, 1864; G. O. 88, Department of Dakota, 1869; G. O. 8, Department of Texas, 1874.

him within eight days after his arrest, and that he is brought to trial within ten days thereafter, unless the necessities of the service prevent such trial; and then he shall be brought to trial within thirty days after the expiration of said ten days.[1] If a copy of the charges be not served, or the arrested officer be not brought to trial, as herein required, the arrest shall cease.[2] But officers released from arrest, under the provisions of this article,

---

but where charges, already formally preferred, are transmitted to him for prosecution, he should not assume to modify them in material particulars in the absence of authority from the convening officer. While he may ordinarily correct obvious mistakes of form or patent or slight errors in names, dates, amounts, etc., he can not without such authority make *substantial* amendments in the allegations, or—least of all—reject or withdraw a charge of specification, or enter a *nolle prosequi* as to the same, or substitute a new and distinct charge for one transmitted to him for trial by the proper superior. (*a*) Ibid., par. 1532.

A list of the proposed witnesses is no part of the military charge, though such a list may properly be and is not unfrequently appended to a charge. In serving upon the accused a copy of the charges, it is not essential, though the better practice, to add a copy of the list of witnesses where one is appended to the original charges. Appending such a list does not preclude the prosecution from calling witnesses not named therein. Ibid., par. 721.

A middle name or initial is no part of a person's name in law, and except where it is necessary to identify the individual, may be omitted from the charge without affecting the validity of the finding or execution of the sentence. So a misnomer in a charge, consisting of an erroneous middle name or initial, may be disregarded in a charge unless the accused moves to strike out or interpose an objection, in the nature of a plea in abatement, when he must also state his true name. The charge may then be amended accordingly in court, without delaying the proceedings. Ibid., par. 730.

A material amendment of a charge should properly be made before the actual trial. Where a court-martial, after the trial was concluded, directed a specification to be amended so as to render it more definite as to time and place, and then caused the accused to be arraigned and to plead over again, nunc pro tunc, *held*, that its action was without sanction of law or precedent. Ibid., par. 731.

A failure at the arraignment to take notice of a variance between the form of a specification to which the accused is called upon to plead and such specification as it appeared in the copy of the charges served at his arrest, is a waiver of the objection, and the same can not be taken advantage of at a subsequent stage of the proceedings. Ibid., par. 732.

Statement of enlistments.—The statement as to enlistments, discharges, etc., required by paragraph 927, Army Regulations 1895, to be furnished with the original charge to the convening authority, is not intended to be accompanied by a declaration on the part of the commanding officer of the accused as to his present character. The regulation does not call for the officer's opinion on the subject, or contemplate that the character of the accused will be taken into consideration at this time. Ibid., par. 733.

[1] Though an officer in whose case the provisions of this article in regard to service of charges and trial have not been complied with is entitled to be released from arrest, he is not authorized to release himself therefrom. If he be not released in accordance with the article, he should apply for his discharge from arrest, through the proper channels, to the authority by whose order the arrest was imposed or other proper superior. Dig. Opin. J. A. G., par. 178.

The term "within ten days thereafter," *held*, to mean after his arrest. Ibid., par 179.

[2] *Held*, a sufficient compliance with the requirement as to the service of charges, to have served a true copy of the existing charges and specifications, though the list of witnesses appended to the original charges was omitted, and though the charges themselves were not in sufficient legal form, and were intended to be amended and redrawn. Ibid., par. 180.

---

[a] See G. O. 64, Department of the Cumberland, 1867; ibid. 98, ibid., 1868; ibid. 85, Department of the South, 1874. G. C. M. O. 36, 42, Department of the Platte, 1877; ibid. 13, ibid., 1878; ibid. 48, Military Division of Pacific and Department of California, 1880.

may be tried, whenever the exigencies of the service shall permit, within twelve months after such release from arrest.[1] *Seventy-first Article of War.*

Written statement of offense; refusal of provost-marshal to receive.
67 Art. War.

1786. No provost-marshal, or officer commanding a guard, shall refuse to receive or keep any prisoner committed to his charge by an officer belonging to the forces of the United States; provided the officer committing shall, at the same time, deliver an account in writing, signed by himself, of the crime charged against the prisoner. *Sixty-seventh Article of War.*[2]

Report of prisoners.
68 Art. War.

1787. Every officer to whose charge a prisoner is commited shall, within twenty-four hours after such commitment, or as soon as he is relieved from his guard, report in writing, to the commanding officer, the name of such prisoner, the crime charged against him, and the name of the officer committing him,[3] and, if he fails to make such report, he shall be punished as a court-martial may direct. *Sixty-eighth Article of War.*

Release of prisoner; permitting escape. Penalty.
69 Art. War.

1788. Any officer who presumes, without proper authority, to release any prisoner committed to his charge, or suffers any prisoner so committed to escape, shall be punished as a court-martial may direct.[4] *Sixty-ninth Article of War.*

GENERAL COURTS-MARTIAL.

Par.
1789. Constitution.
1790. The same, time of war.

Par.
1791, 1792, 1793. Composition.
1794. The same, officers of marines.

CONSTITUTION AND COMPOSITION.

Who may convene general courts-martial in time of peace.

1789. Any general officer commanding an army, a territorial division, or a department, or colonel commanding a separate department, may appoint general courts-martial whenever necessary.[1] But when any such commander is 72 Art. War.

---

[1] The fact that cases of officers put in arrest "at remote military posts or stations" are excepted from the application of the article does not authorize an abuse of the power of arrest in these cases. And where in such a case an arrest, considering the facilities of communication with the department headquarters and other circumstances, was in fact unreasonably protracted without trial, *held*, that the officer was entitled to be released from arrest upon a proper application submitted for the purpose. Ibid., par. 181.

[2] See in this connection the English case of Wolton *v.* Gavin, 16 Q. B., 70, cited in Ives's Mil. Law, p. 74.

[3] The report required in this article is that habitually submitted to the post or other commander by the old officer of the day at the completion of his tour of duty. See in this connection the requirements of the official Manual of Guard Duty in respect to the duties of the officer of the day and the officer or noncommissioned officer commanding the guard.

[4] The Executive order of March 30, 1898 (G. O. 16, A. G. O., 1898), fixing the limits of punishment, appoints different limits of punishment for willfully and for negligently allowing an escape, as separate offenses. A charge of suffering an escape, under this article, should therefore indicate in the specification whether the act is alleged to be willful or negligent only. Dig. Opin. J. A. G., p. 79.

---

[1] This article specifies by what military officer a general court-martial may be constituted. The President of the United States has the power to order such a court, as the con- stitutional Commander in Chief of the Army, irrespective of this article or other statute. Dig. Opin. J. A. G., par. 182.

It is within the power of the President, as Commander in Chief, to convene a general court-martial, even when the commander of the accused officer to be tried is not the accuser. Swaim *v.* U. S., 165 U. S., 553. The President, as Commander in Chief, has a right, *virtute officio*, to appoint a general court-martial. Runkle *v.* U. S., 19 Ct. Cls., 396. A power to appoint courts-martial devolved, by statute, on any other officer is shared by the President, though be be not named therein. Since the earliest legislation of our Government it has been understood and intended that powers granted to general officers in regard to courts-martial are thereby granted to the President. His name is to be understood as written in every statute which confers upon a military officer military authority. Swaim *v.* U. S., 28 Ct. Cls., 173. The President is empowered to convene general courts-martial not merely in the class of cases specified in the seventy-second article of war (viz, where a military officer thereby authorized to convene such a court is the "accuser or prosecutor" of an officer in his command whom it is desired to bring to trial), but, generally and in any case, by virtue of his authority as Commander in Chief of the Army. As such he is authorized to give orders to his subordinates, and the convening of a court-martial is simply the giving of an order to certain officers to assemble as a court and exercise certain powers conferred upon them, when so assembled, by the Articles of War. This general power has been exercised in repeated instances by the President since the formation of the Government. Indeed, if the same could not be exercised, it would be impracticable, in the absence of an assignment of a general officer to command the Army, to administer military justice in a considerable class of cases of officers and soldiers not under the command of any department, etc., commander, as a large proportion of the officers of the general staff, for example. (*a*) Dig. Opin. J. A. G., par. 2038.

A convening of a general court-martial nominally by the Secretary of War is in law a convening by the President, and therefore as legal as if the President himself had signed the order. Ibid., par. 2039.

This article, in empowering certain commanders to constitute the superior courts-martial, makes them the judges in general of the expediency of ordering such courts in particular instances. Except where specially authorized to do so by law or regulation, an officer or soldier can not demand a court-martial in his own case. Ibid., par. 183.

Where a commander empowered by this article to convene a general court-martial declines, in the exercise of his discretion, to approve charges submitted to him by an inferior and to order a court thereon, his decision should in general be regarded as final. Ibid., par. 184.

The authority to order a court under this article is an attribute of command. Thus a department commander, detached and absent from his command for any considerable period by reason of having received a leave of absence (whether of a formal or informal character), or having been placed upon a distinct and separate duty (as that of a member of a court or board convened outside his department, for example), is held to be incompetent during such absence to order a general court-martial as department commander, even though no other officer has been assigned or has succeeded to the command of the department. Ibid., par. 185.

Nor can a department commander, thus absent, exercise such authority through a staff officer or other subordinate, or delegate the same to a subordinate to be exercised by him. Nor, where a general court-martial duly convened by a department commander has, at a time when the commander is thus absent from his command, been reduced, by an incident of the service, below five members, can another member legally be detailed upon the court, by the assistant adjutant-general, or other subordinate officer remaining in charge of the headquarters, since such a detail would be an exercise of a portion of the authority vested by this article in the commander, and which can in no part be delegated. Ibid.

---

[a] The authority of the President as Commander in Chief to institute general courts-martial has been in fact exercised from time to time from an early period, in a series of cases, commencing with those of Brigadier-General Hull, Major-General Wilkinson, and Major-General Gaines, tried in 1813-1816, and including that of Brevet Major-General Twiggs, tried in 1858. His authority in this particular has been in substance affirmed by the Judiciary Committee of the Senate, in Report No. 868, dated March 3, 1879, Forty-fifth Congress, third session. (A single member of the committee apparently dissented, in a subsequent report of April 7, 1879, Mis. Doc. No. 21, Forty-sixth Congress, first session.)

the accuser or prosecutor[1] of any officer under his command the court shall be appointed by the President; and its proceedings and sentence shall be sent directly to the Secretary of War, by whom they shall be laid before the President for his approval or orders in the case. *Seventy-second Article of War; act of July 5, 1884 (23 Stat. L., 121).*

Who may convene in time of war.
73 Art. War.
Dec. 24, 1861, c. 3, v. 12, p. 330.

1790. In time of war the commander of a division, or of a separate brigade[2] of troops, shall be competent to appoint a general court-martial. But when such commander is the accuser or prosecuter[3] of any person under his command, the court shall be appointed by the next higher commander.[2] *Seventy-third Article of War.*

---

[1] See note 3 to par. 1790, *post.*

[2] According to the definition given in the act of March 3, 1799 (1 Stat. L., 752, sec. 1114, Rev. Stat.), a division is an organized command consisting of at least two brigades, and a brigade is an organized command consisting of at least two regiments of infantry or cavalry. By section 9 of the act of April 22, 1898 (30 Stat. L., 362), a division, in time of war, is required to be composed of three brigades, and each brigade of three or more regiments. Dig. Opin. J. A. G., par. 192.

[3] A brigade, to be a separate brigade in the sense of this article, must not exist as a component part of a division; to authorize its commander to convene a general court-martial it must be detached from, or disconnected with, any division, and be operating as a distinct command. Dig. Opin. J. A. G., 85, par. 1. So, where a command, not attached to a division, but occupying a separate post or district, or operating separately in the field, was made up of regiments or parts of regiments, sufficient to compose a brigade, and such as were commonly, or might properly be, organized into a brigade command, the same might in general be viewed as constituting a separate brigade in the sense of this article, i. e., so far as to empower its commander to convene a general court-martial. Ibid. See also ibid., par. 194–198.

CONVENING OFFICER AS ACCUSER OR PROSECUTOR.

It is not essential that the commander who convenes the court-martial for the trial of an officer should sign the charges to make him the "accuser or prosecutor" within the meaning of this article. Nor is the fact that they have been signed by another conclusive on the question whether the convening commander is the actual accuser or prosecutor. The objection that such commander is such calls in question the legal constitution of the court, and while such objection, if known or believed to exist, should regularly be interposed at or before the arraignment, it may be taken during the trial at any stage of the proceedings. (*a*) If not admitted by the prosecution to exist the accused is entitled to prove it like any other issue. Dig. Opin. J. A. G., par. 186.

Whether the commander who convened the court is to be regarded as the "accuser or prosecutor" in the sense of the article in question, where he has had to do with the preparing and preferring of the charges, is mainly to be determined by his *animus* in the matter. He may like any other officer *initiate* an investigation of an officer's conduct and formally prefer, as his individual act, charges against such officer; or by reason of a personal interest adverse to the accused he may adopt practically as his own charges initiated by another; in which cases he is clearly the accuser or prosecutor within the article. On the other hand, it is his duty to determine, when the facts are brought to his knowledge, whether an officer within his command charged with a military offence shall, in the interest of discipline and for the good of the service, be brought to trial. To this end he may formally refer or revise or cause to be revised and then formally referred charges preferred against such officer by another; or, when the facts of an alleged offence are communicated to him, he may direct a suitable officer, as a member of his staff, or the proper commander of the accused, to investigate the matter, formulate and prefer such charges as the facts may warrant, and having been submitted to him he may revise and refer

---

[a] See XVI Opin. Att. Gen., 109.

1791. General courts-martial may consist of any number of officers[1] from five to thirteen, inclusive; but they shall not consist of less than thirteen when that number can be convened without manifest injury to the service.[2] *Seventy-fifth Article of War.*

Composition. **75 Art. of War.**

1792. When the requisite number of officers to form a general court-martial is not present in any post or detachment, the commanding officer shall, in cases which require the cognizance of such a court, report to the commanding officer of the department, who shall, thereupon, order a court to be assembled at the nearest post or department at which there may be such a requisite number of officers, and shall order the party accused, with necessary witnesses, to be transported to the place where the said court shall be assembled. *Seventy-sixth Article of War.*

When requisite number is not present at a post. **76 Art. of War.**

---

them for trial as in other cases; all this he may do in the proper performance of his official duty without becoming the accuser or prosecutor in the case. (*a*) Of course he can not be deemed such accuser or prosecutor where he causes charges to be preferred and proceeds to convene the court by direction of the Secretary of War or a competent military superior. See also par. 188, ibid., and note to par. 187.

The provision of this article (and of Art. 73) that, when the convening commander is "accuser or prosecutor," the court shall be convened by the President or "next higher commander," being expressly restricted to *general* courts, has of course no application to regimental or garrison courts. [But see SUMMARY COURT.] The same *principle*, however, will properly be applied to proceedings before these courts, if it can be done without serious embarrassment to the service. Ibid., par. 189.

[1] Under this article all officers of the active list of the Army are eligible to be detailed as members of general courts-martial. Chaplains, however, are not so detailed in practice. Retired officers, in view of sections 1259, 1260, Revised Statutes, can not legally be assigned to court-martial duty. Dig. Opin. J. A. G., par. 199.

But only officers can be so detailed. Courts-martial composed in whole or in part of enlisted men are unknown to our law. So an "acting assistant surgeon," being a civilian, is not qualified to sit on a court-martial. Though any officer may legally be detailed, it is desirable that no officer should be selected who, from having preferred the charges or other known reason, may be presumed to be biased or interested in the case. Ibid., par. 200.

[2] This section is merely directory to the officer appointing the court, and his decision as to the number which can be convened without manifest injury to the service, being a matter submitted to his sound discretion, must be conclusive. Martin *v.* Mott, 12 Wheat., 19, 35; Mullan *v.* U. S., 140 U. S., 240. The limitation with reference both to the numbers and rank of the members of a general court-martial is discretionary with the appointing power. Mullan *v.* U. S., 23 Ct. Cls., 34. Dynes *v.* Hoover, 20 How., 81.

It is not essential to the validity of the proceedings that the order convening a general court-martial of less than thirteen members should state that "no other officers" or "no greater number" "than those named can be assembled without manifest injury to the service." Attorney-General Wirt (I Opins., 296) did hold such a statement to be essential, but simply expressed the opinion that the President, before confirming a certain death sentence, adjudged by a court of less than thirteen members, would properly satisfy himself that a court of the full number could not have been convened without prejudice to the service. It was held at an early period by the United States Supreme Court that it was for the convening authority to determine as to what number of officers could be detailed without manifest injury to to service, and that his decision on the subject would be conclusive. (*b*)

---

[a] Compare late opinion, to a somewhat similar effect, of the Attorney-General of August 1, 1878 (XVI Opins., 106), in which it is also held that where the record of the trial fails to indicate that the convening officer was the "accuser or prosecutor" of the accused, the latter in applying to the Secretary of War to have the proceedings pronounced invalid on this ground, may establish the facts by the production of affidavits setting forth the circumstances of the case and the action of the commander.

[b] Martin *v.* Mott, 12 Wheaton, 34–37 (1827).

Regular officers not to sit on courts to try officers or soldiers of other forces.
77 Art. of War.

1793. Officers of the Regular Army shall not be competent to sit on courts-martial to try the officers or soldiers of other forces, except as provided in Article 78.[1] *Seventy-seventh Article of War.*

Officers of marines and of Regular Army may be associated on courts.
June 30, 1834, c. 132, s. 2, v. 4, p. 713.
78 Art. of War.

1794. Officers of the Marine Corps, detached for service with the Army by order of the President, may be associated with officers of the Regular Army on courts-martial for the trial of offenders belonging to the Regular Army, or to forces of the Marine Corps so detached; and in such cases the orders of the senior officer of either corps, who may be present and duly authorized, shall be obeyed. *Seventy-eighth Article of War.*

JURISDICTION.

Par.		Par.	
1795.	Officers triable by general courts only.	1796.	Retainers to camp.
		1797.	Militia on active service.

Officers triable by general courts-martial.
79 Art. of War.

1795. Officers shall be tried only by general courts-martial;[2] and no officer shall, when it can be avoided, be

---

[1] The volunteer force during the late war with Spain was not a part of the militia, but of the Army of the United States. Though assimilated to the militia in some respects, as, for example, in the mode of original appointment of regimental and company officers, it was as distinct *in law* from the militia as was the so-called "regular" contingent of the Army.(*a*) Volunteer officers once mustered into the service of the United States and while they remained in that service did not differ substantially from regular officers in their status, rights, or otherwise. Their tenure of office was indeed briefer; this, however, was not a material legal distinction, since the term of regular officers was also in some cases limited by a statute to a definite period, as the duration of the existing war. See Dig. Opin. J. A. G., par. 208 and 2444, par. 1.

As the act "to provide for temporarily increasing the military establishment of the United States in time of war," approved April 22, 1898, declares that the Army of the United States in time of war shall consist of both the Regular Army and the Volunteer Army, it can not be held that the Volunteer Army is, with reference to the Regular Army, "other forces," within the meaning of the 77th Article of War, but regular officers may now sit on courts-martial for the trial of volunteer officers or soldiers. Ibid., par. 209.

[2] Courts-martial (though, within their scope and province, authoritative and independent tribunals) are bodies of exceptional and restricted powers and jurisdiction, their cognizance being confined to the distinctive classes of offenses recognized by the military code.(*b*) Their jurisdiction is criminal, their functions being to assign (in proper cases) punishment; they have no authority to adjudge damages for personal injuries or private wrongs.(*c*). Dig. Opin. J. A. G., par. 1024.

The court-martial having jurisdiction of the person of the accused and of the offense charged, and having acted within the scope of its lawful power, its decision and sentence can not be reviewed or set aside by the civil courts by writ of habeas corpus

---

a As illustrating the distinction made in section 8, Article I, of the Constitution, between the Army and militia, and indicating the status of the volunteers during the late war as a part of the former, see Kerr *v.* Jones, 19 Ind., 351; Wantlan *v.* White, ibid., 471; In the matter of Kimball, 9 Law Rep., 503; Burroughs *v.* Peyton, 16 Grat., 483, 485.

b Ex parte Wilkins, 3 Peters, 193; Barrett *v.* Crane, 16 Verm., 246; Brooks *v.* Adams, 11 Pick, 441; Brooks *v.* Davis, 17 ibid., 148; Brooks *v.* Daniels, 22 ibid., 498; Washburn *v.* Phillip, 2 Met., 296; Smith *v.* Shaw, 12 Johns, 257; Mills *v.* Martin, 19 ibid., 7; In matter of Wright, 34 How. Pr., 221; Duffield *v.* Smith, 3 Sergt. & Rawle, 590; Bell *v.* Tooley, 12 Iredell, 605; State *v.* Stevens, 2 McCord, 32; Miller *v.* Seare, 2 W. Black., 1141; VI Opin. Att. Gen., 425. "A court-martial is a court of limited and special jurisdiction. It is called into existence by force of express statute law, for a special purpose, and to perform a particular duty; and when the object of its creation is accomplished it ceases to exist. * * * If, in its proceedings or sentence, it transcends the limit of its jurisdiction, the members of the court and the officer who executes its sentence are trespassers, and as such are answerable to the party injured, in damages, in the courts." 3 Greenl. Ev., sec. 470.

c See 2 Greenl. Ev., sec. 471, 476; United States *v.* Clark, 6 Otto, 40; Warden *v.* Bailey, 4 Taunt., 78.

tried by officers inferior to him in rank.[1] *Seventy-ninth Article of War.*

Retainers to camp.
63 Art. of War.

1796. All retainers to the camp, and all persons serving with the armies of the United States in the field, though not enlisted soldiers, are to be subject to orders, according to the rules and discipline of war.[2] *Sixty-third Article of War.*

Militia while in service subject to Articles of War.
64 Art. of War.

1797. The officers and soldiers of any troops, whether militia or others, mustered and in pay of the United States, shall, at all times and in all places, be governed by the Articles of War, and shall be subject to be tried by courts-martial.[3] *Sixty-fourth Article of War.*

---

or otherwise. Johnson *v* Sayre, 158 U. S., 109, 118; Dynes *v.* Hoover, 20 How., 65, 82; Ex parte Reed, 100 U. S., 13; Ex parte Mason, 105 U. S., 696; Smith *v.* Whitney, 116 U. S., 167, 177–179.

Whenever the law permits the civil courts of the United States to review the proceedings of courts-martial, such review must be confined to the question of jurisdiction alone. If the court-martial is found to have acted with jurisdiction, the civil court can not and will not go into the case further. Wales *v.* Whitney, 114 U. S., 564; Dynes *v.* Hoover, 20 How., 82.

In order to become amenable to the military jurisdiction, an officer or soldier must have been legally and fully admitted into the military service of the United States. Thus *held* that an officer of the State volunteers appointed by a governor of a State, but not yet mustered into the United States service, was not amenable to the jurisdiction of a court-martial of the United States for an offense committed while engaged in recruiting service under the authority of the governor. So *held* that the making of fraudulent representations in the course of the preliminaries to an enlistment—as in the "declaration of the recruit"—and before the enlistment was legally complete and the soldier thus fully in the United States service, did not constitute an offense within the cognizance of a court-martial. Dig. Opin. J. A. G., par. 1026.

As regards offenses, general courts-martial have exclusive jurisdiction over all offenses punishable capitally, and over those defined in the fifty-eighth article, when committed in time of war. Over other offenses they have concurrent jurisdiction with the inferior courts; but all offenses for which the limit of punishment is in excess of the limits of punishing power of an inferior court, as well as all serious noncapital offenses for which limits of punishment have not been prescribed, will, when practicable, be tried by general court-martial. MANUAL FOR COURTS-MARTIAL.

[1] Whether the trial of an officer by officers of an inferior rank can be avoided or not is a question, not for the accused or the court, but for the officer convening the court; and his decision (as indicated by the detail itself as made in the convening order) upon this point, as upon that of the number of members, is conclusive. An officer, therefore, can not successfully challenge a member because, merely, of being of a rank inferior to his own. Dig. Opin. J. A. G., par. 210.

The statement added in orders convening courts-martial to the effect that "no officers other than those named can be assembled without manifest injury to the service" is as superfluous and unnecessary, for the purpose of excusing the detail of officers junior to the accused, as it is for accounting for the fact that less than the maximum number have been selected for the court.

[2] A "retainer" is defined to be an attendant, or servant, and the term is applied to one who attends upon a superior, as upon an officer or other person, and accompanies the Army in such dependent capacity; the other class mentioned in the article and designated as "persons serving with the Armies of the United States in the field," consists in and is composed of the authorized civilian employes of an army in the field, or of its several staff departments. In both cases the persons designated in the article, by accompanying the Army of their own free will, may be said, by such act, to have voluntarily subjected themselves to military jurisdiction during the period of their sojourn in the theater of active military operations.

[3] The following classes of persons are, by statute, made subject to military law, and are therefore amenable to trial by general court-martial:

(1) Members of the military establishment. Section 1094, Revised Statutes.

(2) Persons admitted to the Soldiers' Home at Washington, D. C. Section 4824, Revised Statutes.

[Footnote 3—Continued.]

(3) Inmates of the National Home for Disabled Volunteers. Section 4835, Revised Statutes.

(4) Persons guilty of contempt of court. Eighty-sixth Article of War.

(5) Post traders (in time of war only). Section 3, act of July 26, 1876 (19 Stat. L., 100).

(6) The Marine Corps, when serving with the Army. Section 1621, Revised Statutes.

(7) The Militia, when called into active service. Sections 1642–1644, Revised Statutes. Sixty-fourth Article of War.

(8) Persons relieving or harboring the enemy. Forty-fifth Article of War.

(9) Persons giving intelligence to the enemy. Forty-sixth Article of War.

(10) Retainers to the camp, and all persons serving with armies in the field. Sixty-third Article of War.

(11) Spies. Section 1343, Revised Statutes. See, also, in connection with the subject of jurisdiction, Manual for Courts-Martial, pp. 11–14.

(12) Soldiers sentenced by courts-martial to dishonorable discharge and confinement. Section 5, act of June 18, 1898.

While it will in general be more for the interest and convenience of the service to bring an accused officer or soldier to trial near the locality of his offense, he may with equal legality be tried by a court convened in any other part of the United States. Dig. Opin. J. A. G., 322, par. 2.

The jurisdiction over persons in the military service covers all military offenses committed by them, whether within or beyond the territorial jurisdiction of the United States. Military offenses are not territorial. (Manual for Courts-Martial, p. 14.)

The jurisdiction of courts-martial is nonterritorial. In a case of an officer who exhibited himself in a drunken condition at a public ball in Mexico, *held* that his offense was cognizable by a court-martial of the United States, subsequently convened in Texas by the department commander. This for the reason that the military jurisdiction does not recognize territoriality as an essential element of military offenses, but extends to the same wherever committed, a principle which is amply confirmed by the comprehensive provision of the sixty-fourth Article of War. See Dig. Opin. J. A. G., par. 169.

An officer or soldier (except as otherwise provided in the sixtieth article) ceases to be amenable to the military jurisdiction for offenses committed while in the military service after he has been separated therefrom by resignation, dismissal, being dropped for desertion, muster out, discharge, etc., and has thus become a civilian. The old English precedent of Sackville's case ([a]) (which appears, indeed, to stand alone even in England) has not been followed in this country or recognized in our laws. Ibid., par. 1027.

A discharge of a soldier, when subject to trial and punishment for a military offense, is a formal waiver and abandonment by the United States of jurisdiction over him. Nor does a soldier, after having been once discharged, as where he has been dishonorably discharged by sentence, remain liable to the military jurisdiction for desertion or any other military offense committed before discharge by reason of being still held in military custody as a prisoner in confinement under the same sentence; for he is then held, not as a soldier, but as a civilian convict.

Nor can a person who, by reason of acceptance of resignation, dismissal, discharge, etc., has become wholly detached from the military service, be made liable to trial by court-martial, for offenses committed while in the service, on the ground that such offenses were not discovered till after he had left the Army.

The returning by a dismissed, etc., officer, to the service under a new commission does not revive a jurisdiction for offenses committed while he was in the service which had lapsed upon his being separated from it.

It is to be understood that the general rule of the nonamenability to military trial of officers and soldiers, after discharge, dismissal, etc., is subject to a specific statutory exception, viz, that provided for in the concluding provision of the sixtieth article. Dig. Opin. J. A. G., par. 1028.

Where a soldier in the Army of the United States was arrested for a crime, and his term of enlistment expired before his trial and conviction by court-martial, *held* that the jurisdiction of the court-martial having once attached by arrest, it retained jurisdiction for all the purposes of trial, judgment, and execution. Barret *v.* Hopkins, 7 Fed. Rep., 312. Now, by section 5 of the act of June 18, 1898 (30 Stat. L., 484), enlisted men sentenced to dishonorable discharge, and to periods of confinement in

---

[a] Note the counter dictum of Lord Mansfield, in Parker *v.* Clive, 4 Burrow, 2419 (dated in 1779), that officers of the Army, "after resigning their commission, cease to be objects of military jurisdiction."

[Footnote [3]—Continued.]

addition thereto, are made liable to trial for offenses committed by them during such period of confinement.

A soldier, however, provided he has not been in fact discharged, may be brought to trial by court-martial after the term of service for which he enlisted has expired, provided, before such expiration, proceedings with a view to trial have been duly commenced against him by arrest or service of formal charges. (*a*) By such arrest or service the military jurisdiction attaches, and, once attached, trial by court-martial and punishment upon conviction may legally ensue, though the soldier's term of enlistment may in fact expire before the trial be entered upon. In the leading case on this point, of a seaman in the Navy (In re Walker, 3 American Jurist, 281) (*b*), the supreme court of Massachusetts held (January 25, 1830) as follows: "In this case the petitioner was arrested, or put in confinement, and charges were preferred against him to the Secretary of the Navy before the expiration of the time of his enlistment; and this was clearly a sufficient commencement of the prosecution to authorize a court-martial to proceed to trial and sentence, notwithstanding the time of service had expired before the court-martial had convened." So *held*, in a case of a soldier in the Regular Army, arrested on the day before the expiration of his term of enlistment, with a view to a trial for a military offense by court-martial, that the jurisdiction of the court had duly attached, and that his trial might legally be proceeded with. And similarly *held* in repeated cases of soldiers and officers of regular and volunteer regiments. Dig. Opin. J. A. G., par. 1029.

Where the amenability of a soldier for a military offense had been finally severed by his due discharge from the service, *held* that it did not revive upon his reentering the service within the period of limitation. Ibid., 331, par. 18.

By the sixth amendment of the Constitution, civilians are guaranteed the right of trial by jury "in all criminal prosecutions." Thus, in time of peace, a court-martial can not assume jurisdiction of an offense committed by a civilian without a violation of the Constitution. It is only under the exceptional circumstances of a time of war that civilians may, in certain situations, become amenable to trial by court-martial. (*c*) Ibid., par. 1031.

A civilian brought to trial before a court-martial can not, by a plea of guilty or other form of legal assent, confer jurisdiction upon the court, where no jurisdiction exists in law. (*d*)

Any statute by which any class of civilians is attempted to be made amenable to trial by court-martial for offenses committed while civilians and in time of peace is necessarily unconstitutional. Ibid., par. 1032.

It can not affect the authority of a court-martial to take cognizance of the military offense involved in an injury committed by a soldier against an officer that before the trial the latter has resigned or been otherwise separated from the Army. Ibid., par. 1037.

Whether a soldier may legally be held amenable to trial by court-martial for an offense committed by him while on furlough will depend upon the nature of the offense and the circumstances of his situation. In general, indeed, where he is thus absent at his home or at such a distance from his station and from troops that his offenses will not directly prejudice military discipline, he will not render himself amenable to the military jurisdiction unless, indeed, he commits a desertion. See MANUAL FOR COURTS-MARTIAL, p. 16, par. 7.

The discharge of a soldier not taking effect till notice thereof, actual or constructive, *held* that a soldier who committed a military offense on the day on which he was to be dishonorably discharged under sentence but before the discharge was delivered to him (or to the officer in charge of the prison at which he was also to be confined under the same sentence) was amenable to the military jurisdiction for the trial and punishment of such offense as being still in the military service. Ibid., par. 1039.

Courts-martial are no part of the judiciary of the United States, but simply instrumentalities of the Executive power. They are creatures of *orders*, the power to convene them, as well as the power to act upon their proceedings, being an attribute of *command*. But, though transient and summary, their judgments, when rendered upon subjects within their limited jurisdiction, are as legal and valid as those of any

---

[a] See G. C. M. O. 16, War Department, 1871.

[b] And see Judge Story's charge to the jury in U. S. *v.* Travers, 2 Wheeler Cr. C., 509; In the matter of Dew, 25 L. R., 540; In re Bird, 2 Sawyer, 33.

[c] See, in support of this view, Ex parte Milligan, 4 Wallace, 121–123; Jones *v.* Seward, 40 Barb., 563; In matter of Martin, 45 ibid., 145: Smith *v.* Shaw, 12 Johns., 257, 265; In matter of Stacy, 10 ibid., 332; Mills *v.* Martin, 19 ibid., 22, Johnson *v.* Jones, 44 Ills., 142, 155; Griffin *v.* Wilcox, 21 Ind., 386; In re Kemp, 16 Wis., 359; Ex parte McRoberts, 16 Iowa, 605; Antrim's case, 5 Philad., 288; III Opin. Att. Gen., 690; XIII ibid., 63.

[d] Compare People *v.* Campbell, 4 Parker, 386; Shoemaker *v.* Nesbit, 2 Rawle, 201; Moore *v.* Houston, 3 Sergt. & Rawle, 190; Duffield *v.* Smith, ibid., 599; also One hundred and third article.

JUDGE-ADVOCATES.

Par.
1798. Appointment.
1799. Duties.

Par.
1800. Counsel for accused, enlisted men.

Judge-advocates.
74 Art. of War.

1798. Officers who may appoint a court-martial shall be competent to appoint a judge-advocate for the same.[1] *Seventy-fourth Article of War.*

---

other tribunals, nor are the same subject to be appealed from, set aside, or reviewed by the courts of the United States or of any State.(*a*) Dig. Opin. J. A. G., par. 992. Their jurisdiction is *criminal*, their function being to assign (in proper cases) *punishment;* they have no authority to adjudge damages for personal injuries or private wrongs.(*b*)

It is no objection to the assuming by a court-martial of jurisdiction of a military offense committed by an officer or soldier that he may be amenable to trial or may actually have been tried and convicted by a criminal court of the State, etc., for a criminal offense involved in his act.(*c*) And the reverse is also law, *viz*, that the civil court may legally take cognizance of the criminal offense involved without regard to the fact that the party has been subjected to a trial and conviction by court-martial for his breach of military law or discipline. In such instances the act committed is an offense against the two jurisdictions and may legally subject the offender to be tried and punished under both. Ibid., par. 1036.

[1] Any commissioned officer may legally be appointed judge-advocate of a court-martial. Thus a surgeon, assistant surgeon, or even a chaplain, is legally eligible to be so detailed. Dig. Opin. J A. G., par. 1521.

A separate judge-advocate should be appointed for each general court-martial convened by a department or other competent commander. The same officer may, indeed, be selected to perform the duties of judge-advocate as often as may be deemed desirable by the commander, but he should be detailed anew for every court-martial on which he acts. To appoint in a general order a particular officer to act as judge-advocate for all the courts to be held in the same command would be quite irregular and without the sanction of precedent. Ibid., par. 1522.

It is competent for the commander who has convened a court-martial to relieve the judge-advocate originally detailed for it and substitute another in his place, and the second may in the same manner be relieved by a third, etc. The relieving, however, of a judge-advocate, pending a trial, must in general embarrass the prosecution of a case, and should not be resorted to if it can well be avoided. Ibid., par. 1523.

Where there have been two or more judge-advocates successively detailed in the course of a trial, the one who is acting at the close is the one (and the only one) required to authenticate the proceedings by his signature. Ibid., par. 1524.

An officer serving as judge-advocate on the *staff* of a department or army commander has as such no authority to act as judge-advocate of a court-martial convened by such commander. If it is desired that he should act as judge-advocate of such a court, he should be specially detailed for the purpose. Ibid., par. 1527.

While a civilian may legally be appointed, or rather employed, as judge-advocate

---

[a] See Dynes *v.* Hoover, 20 Howard, 79; *Ex parte* Vallandigham, 1 Wallace, 243; Wales *v.* Whitney, 114 U. S., 564; Fugitive Slave Law Cases, 1 Blatch., 635; *In re* Bogart, 2 Sawyer, 402, 409; Moore *v.* Houston, 3 S. & R., 197; *Ex parte* Dunbar, 14 Mass., 392; Brown *v.* Wadsworth, 15 Verm., 170; People *v.* Van Allen, 55 N. York, 31; Perault *v.* Rand, 10 Hun, 222; *Ex parte* Bright, 1 Utah, 148, 154; Moore *v.* Bastard, 4 Taunt., 67; VI Opins. At. Gen., 415, 425. "No acts of military officers or tribunals, within the scope of their jurisdiction, can be revised, set aside, or punished, civilly or criminally, by a court of common law." Tyler *v.* Pomeroy, 8 Allen, 484. Where a court-martial has jurisdiction, "its proceedings can not be collaterally impeached for any mere error or irregularity committed within the sphere of its authority. Its judgments, when approved as required, rest on the same basis and are surrounded by the same considerations which give conclusiveness to the judgments of other legal tribunals, including as well the lowest as the highest, under like circumstances." *Ex parte* Reed, 10 Otto, 13.

[b] In case property or money stolen be brought into court and identified, the owner may claim it, and the court will order it to be restored to him But, still, trial by court-martial is a *criminal* proceeding, not an action to recover debt, or sounding in damage for injury, and in this regard * * * the law makes no distinction in favor of soldiers over other persons who have suffered loss or injury. G. O. 18, A. G. O., 1859. See also G. O. No. 2, A. G. O. of 1857.

[c] Thus a soldier may be tried for a violation of Art. 21, in striking or doing other violence to a superior officer, after having been convicted by a civil tribunal for the criminal assault and battery. So, an officer or soldier may be brought to trial under a charge of "Conduct to the prejudice of good order and military discipline" for the military offense (if any) involved—in a homicide or a larceny, of which, as a civil offense, he has been acquitted or convicted by a criminal court.

1799. The judge-advocate, or some person deputed by him, or by the general or officer commanding the Army, detachment, or garrison, shall prosecute[1] in the name of

Prosecution. 90 Art. of War.

---

of a court-martial, such an employment has, for the past fifty years, been of the rarest occurrence in the military service. Civil judge-advocates have been much more frequently employed for naval than for military courts-martial.(*a*) Ibid., par. 1528.

A direction in an order convening a general court-martial, that if the judge-advocate be prevented from attending the junior member of the court will act in his stead, *held* irregular and improper; the function of a judge-advocate as prosecuting officer, not being properly compatible with that of a member of a court-martial. And—the member having acted as judge-advocate in this case—*advised* that the proceedings (though the court had still retained five members) be disapproved by the reviewing authority. A *court-martial* has of course no authority to direct or empower its junior member or any other officer to act as its judge-advocate. Ibid., par. 1526.

Challenge of judge-advocate.—While a judge-advocate is not subject to challenge, and it can not affect the legal validity of the proceedings of a court-martial that the judge-advocate was personally objectionable or hostile to the accused, it is yet desirable to detail as judge-advocate, if practicable, an officer who has no considerable prejudice against the party to be tried, or any decided personal interest in his case.(*b*) Ibid., par. 1529.

An officer can not in general fitly or becomingly act as judge-advocate in a case in which he is personally interested as accuser or prosecutor. Where the judge-advocate had prepared the charges and was the accuser in the case, and moreover entertained a strong personal prejudice or hostility against the accused, *held* that he was ill-chosen to act as judge-advocate especially in the capacities of prosecuting official and adviser to the court. A personal animus against the accused is particularly unbefitting a judge-advocate in a case where the accused is not represented by counsel. One who, without personal prejudice against the accused, or interest in his conviction, has signed the charges as company commander, may not improperly act as judge-advocate in the case. Ibid., par. 1530.

In the case of an officer tried by general court-martial in 1871 and sentenced to be dismissed, the judge-advocate was not only a material witness for the prosecution, but, as the senior first-liutenant in the same regiment with the accused, was the expectant of promotion to the next vacancy in the grade of captain. In his review of the case, it was remarked by the Secretary of War that, "while there is no ground for doubting that the officer charged with this duty performed it with honest and pure intentions, yet certainly his selection for it was unsuitable, inasmuch as by military law and usage it has always been held that the judge-advocate should be free from bias or interest in the result of the proceedings in which he officiates." G. C. M. O. 5, War Dept., 1871. See also G. C. M. O. No. 41, War Dept., 1875.

[1] A judge-advocate is not authorized to entertain charges in the first instance; he can properly act upon charges—i. e., make service of the same, prepare the case for trial, etc.—only when the charges are transmitted to him for the purpose by the officer who has convened the court or detailed him as judge-advocate. Dig. Opin. J. A. G., par. 1531.

The judge-advocate is not unfrequently directed to prepare or reframe charges; but where charges already formally preferred are transmitted to him for prosecution, he should not assume to modify them in material particulars in the absence of authority from the convening officer. While he may ordinarily correct obvious mistakes of form or patent or slight errors in names, dates, amounts, etc., he can not without such authority make *substantial* amendments in the allegations, or—least of all—reject or withdraw a charge or specification, or enter a *nolle prosequi* as to the same, or substitute a new and distinct charge for one transmitted to him for trial by the proper superior. Ibid., par. 1532.

A judge-advocate of a court-martial has no authority to place in arrest an officer or soldier about to be tried by the court or to compel the attendance of the accused

---

a The last occasions of such employment are believed to have been those of the trial of the persons charged with complicity in the assassination of President Lincoln, and the trial of Major Haddock, Prov. Mar. Dept. (see G. C. M. O., 356 and 565, War Dept., 1865), upon which Hon. J. A. Bingham and Hon. Roscoe Conkling were, respectively, employed as judge-advocates. For an early case in which a civilian, who was afterwards a President of the United States, was employed as judge-advocate, see the reply dated March 7, 1814, of the Secretary of War, Hon. John Armstrong, to the communication of the "acting special judge-advocate," Hon. Martin Van Buren, submitting questions for the court. Forbes' Trial of Hull.

b See Gen. Court-Martial Orders No. 5, War Dept., 1871; do. 41, 1875.

Counsel for accused.

the United States, but, when the prisoner has made his plea, he shall so far consider himself counsel for the prisoner as to object to any leading question to any of the witnesses, and to any question the answer to which might tend to criminate himself.[1] *Ninetieth Article of War.*

---

before the court by requiring a noncommissioned officer to bring him or otherwise: these are duties which devolve upon the convening authority or upon the post commander or other proper officer in whose custody or command the accused is at the time. Ibid., par. 1535.

Prosecutor.—Other than the judge-advocate, who by the 90th Article of War, is "required to prosecute in the name of the United States," our military law and practice recognize no official prosecutor. The party who is in fact the accuser or the prosecuting witness is, in important cases, not unfrequently permitted by the court to remain in the court room and advise with the judge-advocate during the trial if the latter requests it; and in some cases he has been allowed to be accompanied by his own counsel. If such a party is to testify, he should ordinarily be the first witness examined; this course, however, is not invariable. Ibid., par. 2078.

Duty of judge-advocate at the trial.—A competent judge-advocate will properly be left by the court to introduce the testimony in the form and order deemed by him to be the most advantageous and generally to bring on cases for trial and conduct their prosecution according to his own judgment.

The general presumption of law, made in favor of all public officers, in the absence of affirmative evidence to the contrary, that they duly fulfill their functions, applies to the judge-advocate. Dig. Opin. J. A. G., par. 1546.

An absence of the judge-advocate from the court during the trial does not *per se* affect the validity of the proceedings, but is, of course, to be avoided if possible. When the judge-advocate is obliged to temporarily absent himself, the court should in general suspend the proceedings for the time; or, if his absence is to be prolonged, should adjourn for a certain period. Ibid., par. 1539.

Should the judge-advocate be required to give evidence as a witness, the clerk or reporter of the court may go on to record his testimony while on the stand; or, if there be no clerk or reporter, he may record his own testimony as that of any other witness. Ibid., par. 1540.

The judge-advocate in our practice is entitled to the closing argument or address to the court, and he may present an address although the accused waives his right to present any, the function of the judge-advocate at this stage of the proceedings not being confined merely to a *replying* to the accused. The judge-advocate, in his address, is not authorized to read to the court evidence or written statements not introduced upon the trial and which the accused has had no opportunity to controvert or comment upon. Ibid., par. 1539.

The judge-advocate is entitled by usage to sum up the case and present an argument at the conclusion of the trial, even though the accused declines to make argument or statement. The court is not authorized to deny to the judge-advocate this right to be heard. Ibid., par. 1542.

For the court or the president of the court to place or order the judge-advocate in arrest would be an unauthorized proceeding. The court, indeed, in a proper case under Art. 86, might proceed against its judge-advocate as for a contempt. But an arrest could not be imposed nor a punishment executed in the case of such officer, except through the convening authority or other competent commander. Ibid., par. 1544.

[1] *Duty of judge-advocate as counsel for accused.*—The duty of the judge-advocate toward the accused should not be regarded as confined to the limited province of "counsel for the prisoner" as the same is defined in the 90th Article of War. Where the accused is ignorant and inexperienced and without counsel—especially where he is an enlisted man—the judge-advocate should take care that he does not suffer upon the trial from any ignorance or misconception of his legal rights and has full opportunity to interpose such plea and make such defense as may best bring out the facts, the merits, or the extenuating circumstances of his case. Ibid., par. 1533.

For the judge-advocate to counsel the accused, when a soldier or inferior in rank, to plead guilty, must in general be unbefitting and inadvisable. But where such plea is voluntarily and intelligently made, the judge-advocate should properly advise the accused of his right to offer evidence in explanation or extenuation of his offense, and, if any such evidence exists, should assist him in securing it. And where no such evidence is attainable in the case, the judge-advocate should still see that the

Counsel for accused persons. Par. 626, A. R.

1800. The commanding officer of a post where a general court-martial is convened will, at the request of any prisoner who is to be arraigned, detail as counsel for his defense a suitable officer, one not directly responsible for the discipline of an organization serving thereat nor acting as a summary court. If there be no such officer available, the fact will be reported to the appointing authority for action. An officer so detailed should perform such duties as usually devolve upon counsel for defendant before civil courts in criminal cases. As such counsel he should guard the interests of the prisoner by all honorable and legitimate means known to the law, so far as they are not inconsistent with military relations.[1] *Par. 626, A. R.*

---

accused has an opportunity to present a "statement," written or verbal, to the court if he has any desire to do so. Ibid., par. 1534.

Opinion.—It is strictly the proper practice for a judge-advocate not to give his opinion upon a point of law arising upon a military trial, unless the same may be required by the court. This practice, however, is often departed from; and the opinions of judge-advocates, suitably tendered, are in general received and entertained by the court without objection, whether or not formally called for. But where the court *does* object to the giving of an opinion by the judge-advocate, he is not authorized to attempt to give it, and, of course, not authorized to enter it upon the record. Whether the *fact*—that the opinion was offered and objected to by the court—shall be entered upon the record, is a matter for the court alone to decide. It is, however, certainly the better practice that *all* the proceedings, even those that are *irregular*, which transpire in connection with the trial should be set out in the record for the inspection of the reviewing authority. Ibid., par. 1536.

At the trial of Major Porter in 1857 the court refused to admit an argument of the judge-advocate in support of an objection to an application by the defense for delay. This action was disapproved by the Secretary of War, whose decision was that "it was the duty of the judge-advocate to make the objection, and the argument by which he sustained it was very proper. It was a part of the proceedings which ought to have been entered upon their record. G. O., No. 5, A. G. O., 1857.

[1] *Counsel for accused.*—An officer or soldier put upon trial before a court-martial is not entitled as of right to have counsel present with him to assist him in his defense, but the privilege is one which is almost invariably conceded; (*a*) and where it is unreasonably refused, such refusal may constitute ground for the disapproval of the proceedings. A court-martial, however, is not required to delay an unreasonable time to enable an accused to provide himself with counsel. Dig. Opin. J. A. G., par. 984.

While reasonable facilities for procuring such counsel as he may desire should be afforded an accused, his claim must be regarded as subordinate to the interests of the service. Thus where an accused officer applied to the department commander who had convened the court to authorize a particular officer whom he desired as counsel to act in that capacity, and this officer could not at the time be spared from his regular duties without material prejudice to the public interests, *held* that the commander was justified in denying the application, and further that the validity of the subsequent proceedings and sentence in the case was not affected by such denial. (*b*) Ibid., par. 985.

A military court has no authority, analogous to that sometimes exercised by civil

---

a Compare, on this subject, People *v.* Daniell, 6 Lansing, 44; People *v.* Van Allen, 55 N. Y., 31.

b Held, that par. 1037, A. R. 1901, providing for the detail by the commander of a post at which a general court-martial is ordered to sit of a suitable officer of his command to act as counsel for prisoners to be arraigned, if requested by them, was not to be construed as sanctioning the detail or voluntary appearance of a post commander himself in such capacity at his own post. Dig. Opin. J. A. G., par. 988. See, also, for duties of counsel so detailed, par. 1037 A. R., 1901; circulars 5 and 8, H. Q. A., 1894; and Davis's Military Law, pp. 36, 37.

The rule that an accused person is not entitled to counsel as of right grows out of the fact that courts-martial are without the authority possessed by civil courts having criminal jurisdiction of awarding a fee to counsel by way of compensation for his services, nor can a military tribunal of any sort assign counsel to the defense of a particular accused person. This for the reason that courts-martial are quite without the authority to require the services of civilian attorneys.

EMPLOYMENT OF REPORTERS; INTERPRETERS.

Reporter.
Mar. 3, 1863, c. 75, s. 28, v. 12, p. 736; June 23, 1874, c. 458, s. 2, v. 18, p. 244.
Sec. 1203, R. S.

1801. The judge-advocate of a military court shall have power to appoint a reporter, who shall record the proceedings of, and testimony taken before, such court, and may set down the same, in the first instance, in short hand. The reporter shall, before entering upon his duty, be sworn, or affirmed, faithfully to perform the same.[1]

THE TRIAL.

CHALLENGES.

Challenges.
88th Art. of War.

1802. Members of a court-martial may be challenged by a prisoner, but only for cause stated to the court. The court shall determine the relevancy and validity thereof, and shall not receive a challenge to more than one member at a time.[2] *Eighty-eighth Article of War.*

---

courts in criminal cases, to *assign* counsel to an accused unprovided with counsel. Nor can such a court excuse one of its members to enable him to act as counsel for an accused. Ibid., par. 987. See, for a case in which this was attempted, General Court-Martial Orders, No. 62, War Dept., 1874.

An application by an accused officer to be furnished, at the expense of the United States, with civil-counsel to defend him on his trial by court-martial *remarked upon* as unprecedented and not to be entertained. Par. 1072, A. R., 1901, relates to no such a case. No authority exists for the payment, by the United States, of civil counsel employed by an officer to defend him on his trial by court-martial. Ibid., par. 991.

[1] The power to appoint the reporter is vested exclusively in the "judge-advocate" and can not be exercised by the court. The employment, however, of a stenographic reporter should be resorted to only in an important case. Dig. Opin. J. A. G., par. 2168.

The description, "the judge-advocate of a military court," does not strictly include the *recorder* of a *court of inquiry*, especially as a court of inquiry is not properly a *court* at all. The same reason, however, often exists for appointing a reporter for a court of inquiry as for a general court-martial, and it is understood that the Pay Department recognizes and pays the accounts of reporters appointed by reporters of courts of inquiry. Ibid., 659, par. 2.

The employment of a stenographic reporter, under section 1203 Revised Statutes, is authorized for general courts only, and in cases where the convening authority considers it necessary. The convening authority may also, when necessary, authorize the detail of an enlisted man to assist the judge-advocate of a general court in preparing the record. Par. 1062, A. R., 1901.

There is no authority for the employment of a *civilian* clerk for a court-martial, other than the "*reporter*" authorized by Sec. 1203, Rev. Sts., and referred to in pars. 958 and 1062, Army Regulations. An *enlisted man* may be detailed as such clerk under par. 1063. A court-martial, member of court, or judge-advocate can not of course lawfully communicate to a reporter or clerk, by allowing him to record the same or otherwise, the finding or sentence of the court. Before proceeding to deliberate upon its finding, the court should require the reporter or clerk, if it has one, to withdraw. But the fact that the finding or sentence, or both, may have been made known to the reporter or clerk of a court-martial can not affect the legal validity of its proceedings or sentence.

The statute does not indicate by whom the reporter shall be sworn. In practice he is sworn by the judge-advocate, a form of oath being prescribed in the MANUAL FOR COURTS-MARTIAL. If the same party is employed as a reporter for more than one case, he should, properly, be sworn anew in each case. The reporter should be excluded from the court during its deliberations and not permitted to record the findings or sentence. Ibid., par. 2169.

[2] This article authorizes the exercise of the right of challenge before all courts except field officers' courts and summary courts. These courts are not subject to be chal-

CONTINUANCES.

Continuances.
93d Art. of War.

1803. A court-martial shall, for reasonable cause, grant a continuance to either party, for such time, and as often, as may appear to be just: *Provided*, That if the prisoner be in close confinement, the trial shall not be delayed for a period longer than sixty days.[1] *Ninety-third Article of War.*

---

lenged, because, being composed of but one member, there is no authority provided which is competent to pass upon the validity of the challenge. Dig. Opin. J. A. G., par. 234.

The article imposes no limitation upon the exercise of the right of challenge other than that "more than one member shall not be challenged at a time." Thus while the panel, or the court as a whole, is not subject to challenge, yet all the members may be challenged provided they are challenged separately. The article contains no authority for challenging the judge-advocate. Ibid., par. 248.

Courts should be liberal in passing upon challenges, but should not entertain an objection which is not specific, or allow one upon its mere assertion by the accused, without proof and in the absence of any admission on the part of the member. A positive declaration by the challenged member to the effect that he has no prejudice or interest in the case will, in general, in the absence of material evidence in support of the objection, justify the court in overruling it. Ibid., par. 245.

It is not necessary, though usual and proper, for a member to withdraw from the court room on being challenged and pending the deliberation on the objection. Ibid., par. 244.

An accused challenged the entire court on the ground that the convening officer was "accuser." *Held* properly overruled; the array can not be challenged at military law. The article declares that "the court * * * shall not receive a challenge to more than one member at a time." Ibid., par. 250.

Where, before arraignment, the accused, an officer, without having personal knowledge of the existence of ground of challenge to a member, had credible hearsay information of its existence, *held* that he should properly have raised the objection before the members were sworn, and that the court was not in error in refusing to allow him to take it at a subsequent stage of the trial. Ibid., par. 246.

The fact that a sufficient cause of challenge exists against a member, but, through ignorance of his rights, is not taken advantage of by the accused, or if asserted is improperly overruled by the court, can affect in no manner the validity in law of the proceedings or sentence, though it may sometimes properly furnish occasion for a disapproval of the proceedings, etc., or a remission in whole or in part of the sentence. (*a*) Ibid., par. 247.

A court-martial can not relieve or "excuse" a member except upon a challenge duly interposed and sustained under this article. The fact that a member has been absent from the court for several days and has not heard the testimony meanwhile taken constitutes no legal ground for excusing him by the court. Ibid., par. 251.

[1] In making an application for a continuance or postponement under this article, on account of the absence of a witness, such application should be supported by a duly executed affidavit. (*b*) It should, however, in all cases require that the desired evidence appear or be shown to be material, and not merely cumulative (*c*), and that to await its production will not delay the trial for an unreasonable period. It should also, in general, before granting the continuance, be assured that the absence

---

[a] See opinion of the Attorney-General of January 19, 1878 (XV Opins., 432), in which the opinion, expressed by the Judge-Advocate-General in the most recent of the cases upon which this paragraph is based—that the fact that one of the charges upon which the accused was convicted was preferred by a member of the court who also testified as a witness on the trial (but who, though clearly subject to objection, was not challenged by the accused) could not affect the validity of the sentence of dismissal after the same had been duly confirmed—is concurred in by the Attorney-General. And to a similar effect see Keyes *v.* U. S., 15 Ct. Cls., 532; ibid., 137 U. S., 224.

In G. C. M. O. 88, Department of Dakota, 1878, the point is noticed that where a challenge interposed by the accused has been improperly disallowed a subsequent plea of guilty is not to be treated as a waiver of the advantage to which he may be entitled by reason of the improper ruling.

[b] It is not the practice of courts-martial to admit counter affidavits from the opposite party as to what the absent witness would testify. And as to the civil practice, see Williams *v.* State, 6 Nebraska, 334.

[c] Compare People *v.* Thompson, 4 Cal., 238; Parker *v.* State, 55 Miss., 414.

OATHS.

Oath of president and members.

1804. The judge-advocate shall administer to each member of the court, before they proceed upon any trial, the following oath,[1] which shall also be taken by all members of regimental and garrison courts-martial: *You, A B, do swear that you will well and truly try and determine, according to evidence, the matter now before you, between the United States of America and the prisoner to be tried, and that you will duly administer justice, without partiality, favor, or affection, according to the provisions of the rules and articles for the government of the armies of the United States, and if any doubts should arise, not explained by said articles, then according to your conscience, the best of your understanding, and the custom of war in like cases; and you do further swear that you will not divulge the sentence of the court until it shall be published by the proper authority, except to the judge-advocate; neither will you disclose or discover the vote or opinion of any par-*

---

of the witness is not owing to any neglect on the part of the applicant. This feature, however, will not be so much insisted upon in military as in civil cases (*a*).

Where "reasonable cause" is, in the judgment of the court, exhibited, the party is entitled to some continuance under the article (*b*). A refusal, indeed, by the court to grant such continuance will not invalidate the proceedings, but, if the accused has thus been prejudiced in his defense, may properly constitute good ground for disapproving the sentence, or for mitigating or partially remitting the punishments. Dig. Opin. J. A. G., par. 276.

Where an accused soldier, by reason of his regiment having been moved a long distance since his arrest, was separated at his trial from certain witnesses material to his defense, *held* that he was entitled to a reasonable continuance for the purpose of procuring their attendance or their depositions. Ibid., par. 277.

That the charges and specifications upon which an accused is arraigned differ in a material particular from those contained in the copy served upon him before arraignment may well constitute a sufficient ground for granting him additional time for the preparation of his defense. Ibid., par. 278.

Where, after arraignment, a material and substantial amendment is allowed by the court to be made by the judge-advocate in a specification, the effect of which amendment is to necessitate or make desirable a further preparation for his defense on the part of the accused, a reasonable postponement for this purpose will, in general, properly be granted by the court. Ibid., par. 279.

It is, in general, good ground for a reasonable continuance that the accused needs time to procure the assistance of counsel, if it is made to appear that such counsel can probably be obtained within the time asked, and that the accused is not chargeable with remissness in not having already provided himself with counsel. Ibid., par. 280.

[1] This article makes the administering to the court of the form of oath thereby prescribed an essential preliminary to its entering upon a trial. Until the oath is taken as specified, the court is not qualified "to try and determine." The arraignment of a prisoner and reception of his plea—which is the commencement of the trial—before the court is sworn, is without legal effect. The article requires that

---

a A military accused can not be charged with laches in not procuring the attendance at his trial of a witness who is prevented from being present by superior military authority. Thus in a case in G. O. 63, Department of Dakota, 1872, an accused soldier was held entitled to a continuance till the return of material witnesses then absent on an Indian expedition.

b It would properly be so held upon common-law principles, even independently of the positive terms of the article. In Rex *v.* D'Eon, 1 W. Black., 514, it was declared by Lord Mansfield that "No crime is so great, no proceeding so instantaneous, but that, upon sufficient grounds, the trial may be put off."

ticular member of the court-martial, unless required to give evidence thereof, as a witness, by a court of justice, in a due course of law. So help you God. Eighty-fourth Article of War. 84 Art. of War.

1805. When the oath has been administered to the members of a court-martial, the president of the court shall administer to the judge-advocate, or person officiating as such, an oath in the following form: *You, A B, do swear that you will not disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof, as a witness, by a court of justice, in due course of law; nor divulge the sentence of the court to any but the proper authority, until it shall be duly disclosed by the same. So help you God. Eighty-fifth Article of War.*

Oath of the judge-advocate.

85 Art. of War.

BEHAVIOR OF MEMBERS.

1806. All members of a court-martial are to behave with decency and calmness.[1] *Eighty-seventh Article of War.*

Behavior of members.

87 Art. of War.

---

the oath shall be taken not by the court as a whole, but by "each member." Where, therefore, all the members are sworn at the same time, the judge-advocate will preferably address each member by name, thus, "you, A. B., C. D., E. F., etc., do severally swear," etc. A member added to the court, after the members originally detailed have been duly sworn, should be separately sworn by the judge-advocate in the full form prescribed by the article; otherwise he is not qualified to act as a member of the court. A member who prefers it may be affirmed instead of sworn. Dig. Opin. J. A. G., par. 225.

The members are sworn to try and determine *the matter before them* at the time of the administering of the oath. In a case therefore, where, after the court had been sworn and the accused had been arraigned and had pleaded, an additional charge, setting forth a new and distinct offense, was introduced into the case, and the accused was tried and convicted upon the same; *held* that, as to this charge, the proceedings were fatally defective, the court not having been sworn to try and determine such charge.(*a*) Ibid., par. 226.

It is a departure from the engagement expressed in the body of the oath—to try and determine according to evidence, and administer justice according to the Articles of War, etc.,—for a court martial to determine a case either upon personal knowledge of the facts possessed by the members and not put in evidence, or according to the private views of justice of the members independently of the provisions of the code.

The words "a court of justice" are deemed to mean a civil or criminal court of the United States, or of a State, etc., and not to include a court-martial. A case can hardly be supposed in which it would become proper or desirable for a court-martial to inquire into the votes or opinions given in closed court by the members of another similar tribunal.(*b*)

[1] *Presiding officer.*—No special rank or qualifications are required for the position of president of a military court.(*c*) In our practice the president is not appointed as

---

a See General Court-Martial Orders No. 39, War Dept., 1867; G. O. No. 13, Northern Department, 1864.

b The only case which has been met with in which the members of a court-martial have been required to disclose their votes by the process of a civil court, is that of *in re* Mackenzie, 1 Pa. Law J. R., 356, in which the members of a naval court-martial were compelled, against their objections, to state their votes as given upon the findings at a particular trial.

In the present corresponding British article, the words "or a court-martial" are added after the words "a court of justice."

c In the British service certain important powers are vested by law and regulations in the president of a court-martial who is appointed in the order convening the court. In our service the presiding officer becomes such solely by reason of his seniority in point of rank, and he may exercise as such presiding officer only such powers as are usually exercised by the presiding officers of deliberative bodies.

such; he is simply the senior in rank of the members present and he presides by virtue of his seniority alone. If the senior of the officers detailed in the convening order is not present with the court at the original organization, the next senior present becomes president; so, if the officer who presided at the beginning of a trial is at a subsequent stage of the proceedings relieved or compelled to be absent by sickness, etc., the next ranking officer present presides as a matter of course, and the senior officer present with the court at the termination of the trial authenticates the proceedings as president. Dig. Opin. J. A. G., par. 2043.

While a special authority—that of swearing the judge-advocate—is devolved upon the president of a military court by statute (the 85th Article of War (*a*)), such officer has in other respects, as in performing the usual duties of a presiding officer, in authenticating the proceedings with his signature and in communicating with the convening officer or other commander, no original authority but acts simply as the representative and "organ" of the court. (*b*) Ibid., par. 2044.

In deliberations on questions raised upon a trial, as well as in the finding and the adjudging of the sentence, the presiding member is on a perfect equality with the other members. [See paragraphs 1020 and 1021, Army Regulations of 1895]. He has no casting vote, nor, if the vote is even, does *his* vote have any greater or other weight or effect than that of any other member.

The president of a military court has no *command* as such. As president he can not give an *order* to any other member. As the organ of the court he gives of course the directions necessary to the regular and proper conduct of the proceedings; but a failure to comply with a direction given by him while it may constitute "conduct to the prejudice of good order and military discipline," can not properly be charged as a "disobedience of a lawful command of a superior officer" in violation of Article 21. (*c*) Ibid., par. 2045.

Absent members.—A member of a court-martial, though, strictly, answerable only to the convening authority for a neglect to be present at a session of the court, will properly, when prevented from attending, communicate the cause of his absence to the president or judge-advocate, so that the same may be entered in the proceedings. Where a member, on reappearing after an absence from a session, fails to offer any explanation of such absence, it will be proper for the president of the court to ask of him such statement as to the cause of his absence as he may think proper to make. It need scarcely be added that the absence of a member does not affect the legality of the proceedings, provided a quorum of members remain. (*d*) Dig. Opin. J. A. G., par. 1662.

A court-martial can not relieve or "excuse" a member except upon a challenge duly interposed and sustained under this article. The fact that a member has been absent from the court for several days, and has not heard the testimony meanwhile taken, constitutes no legal ground for excusing him by the court. Ibid., par. 251.

Performance of other duties.—Officers detailed and serving as members of courts-martial are not in general properly ordered to perform other duties while the court remains in session or not adjourned. (*e*) And they are not to be considered as any more subject to such orders now that they are no longer allowed a special compensation for their services than they were formerly. (*f*) In an emergency indeed arising out of a state of war, or other public exigency, additional service may be imposed upon such officers; in a case of this kind, however, their service on the court would, preferably, be temporarily suspended. Members of *inferior* courts-martial are not unfrequently required to perform additional duty because of the limited number of officers at the post.

Protests.—Where the majority of the members of a court-martial have come to a decision upon any question raised in the course of the proceedings, or upon the finding or sentence, no individual of the minority, whether the president or other member, is entitled to have a *protest* made by himself against such decision entered upon the record. The conclusions of the court (except in cases of death sentences, where a concurrence of two-thirds is required) are to be determined invariably by the vote of the majority of its members, and it is much less important that individual members should have an opportunity of publishing their personal convictions than

---

[a] The further function devolved upon him by Article 52 is not known to have ever been exercised in our service; the article itself is a dead letter, as is also Article 53 *in pari materia.*

[b] The language of paragraph 1005, Army Regulations of 1889, was taken from the order of Secretary Crawford in his review of the case of Brevet Lieutenant-Colonel Backenstos, in G. O. 14, War Dept., 1850.

[c] For the president of a court-martial to assume to adjourn the court against the vote of the majority of the members would be an unauthorized act and a grave irregularity, properly subjecting him to a charge under the 62d Article. Dig. Opin. J. A. G., par. 2046.

[d] VII, Opin. Att. Gen., 101.

[e] See paragraph 1019 A. R., 1901.

[f] XIII Opin. Att. Gen., 526; secs. 1137, 1138, A. R. 1863; sec. 24, act of July 15, 1870.

CONTEMPT OF COURT.

1807. The court-martial may punish at discretion any person who uses any menacing words, signs, or gestures in its presence, or who disturbs its proceedings by any riot or disorder.[1] *Eighty-sixth Article of War.*

Contempts of court.
86 Art. of War.

---

that the action of the court should appear upon the formal record as that of the aggregate body, and should carry weight and have effect as such.(*a*) Nor can a protest (against the finding or otherwise) by a minority of the members be appended to the record, on a separate paper. Ibid., par. 2079.

[1] The power of a court-martial to punish under this article being confined practically to acts done in its immediate presence, such a court can have no authority to punish, as for a contempt, a neglect by an officer or soldier to attend as a witness in compliance with a summons.(*b*) Dig. Opin. J. A. G., par. 230.

A court-martial has none of the common-law power to punish for contempt vested in the ordinary courts of justice, but only such authority as is given it by this article. Thus *held* that a court-martial was not authorized to punish, as for a contempt, under this article (or otherwise), a civilian witness duly summoned and appearing before it, but, when put on the stand, declining (without disorder) to testify. Ibid., par. 231.

The authority of a court-martial to punish as for a contempt being confined by the code (article 86) to cases of acts of menace or disorder committed in its presence, such a court would not be empowered to punish, as being in contempt, a witness appearing before it whose attendance it had been necessary to compel by process of attachment. (Ibid., par. 232.

Where a contempt within the description of this article has been committed, and the court deems it proper that the offender shall be punished, the proper course is to suspend the regular business, and after giving the party an opportunity to be heard, explain, etc., (*c*) to proceed—if the explanation is insufficient—to impose a punishment, resuming thereupon the original proceedings. The action taken is properly summary, a formal trial not being called for. Close confinement in quarters or in the guardhouse during the trial of the pending case, or forfeiture of a reasonable amount of pay, has been the more usual punishment. Instead of proceeding against a military person for a contempt in the mode contemplated by this article, the alternative course may be pursued of bringing him to trial before a new court on a charge for a disorder under article 62. (*d*) Ibid., par. 233.

Where a civilian witness is brought before a court-martial, but refuses to testify, the court is not invested with any inherent power to punish the witness in such case, either summarily or otherwise, as for a contempt, but must proceed in accordance with the method prescribed in the act of March 2, 1901. Such power can only be exercised by it when given by the positive terms of some statute. Section 1202 of the Revised Statutes arms the court with authority to compel the witness to appear and testify as far as this can be done by *process*; but in securing his testimony the court is restricted to the means which it is authorized to employ. It can not inflict any punishment where the power to impose it is not clearly conferred by Congress. XVIII Opin. Att. Gen., 278. Power to compel the giving of testimony has upon several occasions been conferred upon military tribunals. Article 5, section 14, of the articles adopted by resolution of Congress of September 20, 1776, contained the requirement that "all persons called to give evidence in any cause before a court-martial, who shall refuse to give evidence, shall be punished for such refusal at the discretion of such court-martial." The terms of this article were broad enough to include civilian witnesses, and it was doubtless meant to apply to them. It was repealed, however, by the resolution of Congress of May 31, 1786. Section 4 of the act of April 8, 1814 (3 Stat. L., 135), conferred similar authority upon courts-martial for the trial of members of the militia forces; but this statute was limited by its terms to the period of the then existing war. Prior to the year 1800 no power existed in the British service to secure the attendance of witnesses or to compel them

---

a Simmons, sec. 469; Hough, Precedents, p. 473, note 4.
b As to the power of courts of inquiry to punish for contempt see par. 1864, *post*, note 2.
c See G. C. M. O. 37, Fourth Military District, 1868.
d Compare Samuel, 634; Simmons, sec. 434. The latter course has not unfrequently been adopted in our practice.
For a case in which the accused, being a commissioned officer, was summarily proceeded against for the offense of contempt of court see G. C. M. O. No. 36, War Dept., 1870.

THE ARRAIGNMENT.

Prisoner standing mute. 89 Art. of War.

1808. When a prisoner, arraigned before a general court-martial, from obstinacy and deliberate design, stands mute, or answers foreign to the purpose, the court may proceed to trial and judgment, as if the prisoner had pleaded not guilty.[1] *Eighty-ninth Article of War.*

---

to testify in the event of their voluntary appearance. Power to issue compulsory process was conferred by statute in the mutiny act for the year 1800, and in 1830 the power to compel civilian witnesses to testify was conferred by a similar statute, authorizing such witness to be attached in the court of the King's Bench for such failure to testify. Clode, Military Law, 125.

[1] The provisions of this article in respect to an accused person standing mute, contemplate a formal arraignment of the prisoner in accordance with the rules of procedure prescribed for the courts of the United States having criminal jurisdiction. An accused may, therefore, follow one of four courses in reply to the charges read by the judge-advocate as a part of his arraignment, and may: (a) stand mute, in which event the provisions of the Eighty-ninth Article of War become operative, (b) confess in open court; (c) submit one of the special pleas, presently to be described; or (d) plead to the general issue ("guilty" or "not guilty").(*a*)

It is a general rule of criminal law that where the accused pleads guilty, no testimony on the merits is to be introduced. But, on military trials the court, even against the objection of the accused, may, in its discretion, call upon the judge-advocate to offer evidence, or approve of his doing so, in a case where such evidence is deemed to be essential to the due administration of military justice.(*b*) An accused can not be allowed, by pleading guilty, to shut out testimony where the interests of the service require its introduction. But in all cases where evidence is introduced by the prosecution after a plea of guilty, the accused should of course be afforded an opportunity to offer rebutting evidence, or evidence as to character, should he desire to do so. Dig. Opin. J. A. G., par. 1988. See also ibid, par. 1999.

Wherever, in connection with the plea of guilty, a statement or confession, whether verbal or written, is interposed by the accused, both plea and statement should be considered together by the court; and if it is to be gathered from the statement that evidence exists in regard to the alleged offense which will constitute a defense to the charge, or relieve the accused from a measure of culpability, the court will properly call upon the judge-advocate to obtain and introduce such evidence, if practicable. Ibid, par. 1991. See also ibid., par. 1992.

By a plea of "guilty" the accused, if a military person, submits himself to the jurisdiction of the court, admitting that it has jurisdiction over both person and

---

[a] If a man, being put on his trial, says nothing at all in cases of felony, the court, says Lord Chief Justice Hale, ought, *ex officio*, to empanel a jury and swear it, as an inquest of office, to inquire whether he stands mute, *ex visitatione Dei* (of the act of God), or of malice. Adye, 131; Hale Hist. Pl. Cor., 317. Where an accused stands mute *ex visitatione Dei*,* a court-martial would be authorized to resort to a similar course of procedure; or, the trial could be desisted from until the facts had been represented to the reviewing authority for such action as he might deem proper in view of the peculiar circumstances of the case. Where the accused stands mute through malice, or answers foreign to the purpose, the terms of the article become operative, and the trial proceeds as if a plea of not guilty had been formally entered.†

Where an accused declined to plead on the ground that he was so much under the influence of liquor at the time of the acts charged that he could not remember what occurred, *held* that the court properly directed a plea of "not guilty" to be entered. Dig. Opin. J. A. G., par. 1999.

For the method of executing the judgment of *peine forte et dure*, see Adye, p. 134, Hale Hist. Pl. Cor., 219. By 33 Henry VIII, those who stood mute, who were notorious felons, were to have "strong and hard imprisonment;" by 12 George III, ch. 20, standing mute through malice was made equivalent to a conviction upon evidence or confession. At present an accused who "refuses to plead, or does not plead intelligibly," is regarded as having pleaded "not guilty." Army act of 1884, p. 603.

[b] The principle that, in cases in which the plea is guilty, the court should take testimony, where necessary to the comprehending of the facts and the doing of justice, though apparently in a measure lost sight of at a later period, was clearly enunciated in early General Orders of the War Department. Thus, in G. O. 23 of 1830, Major-General Macomb (commanding the Army) expresses himself as follows: "In every case in which a prisoner pleads guilty, it is the duty of the court-martial, notwithstanding, to receive and to report in its proceedings such evidence as may afford a full knowledge of the circumstances, it being essential that the facts and particulars should be known to those whose duty it is to report on the case, or who have discretion in carrying the sentence into effect." And see G. O. 21 of 1833 to a similar effect.

---

* For a case of standing mute, *ex visitatione Dei*, see Adye, p. 132.

† For a case in which an accused person declined to plead, thus bringing this article into operation, see General Court-Martial Orders No. 91, War Department, 1874.

offense. In re Davidson, 21 Fed. Rep., 618; in re Zimmerman, 30 ibid., 176; Vanderheyden *v.* Young, 11 Johns, 160.

Withdrawal of plea.—A court-martial is authorized, in *any* case, in its discretion, to permit an accused to withdraw a plea of not guilty, and substitute one of guilty, and *vice versa*, or to withdraw either of these general pleas and substitute a special plea. And wherever the accused applies to be allowed to change or modify his plea, the court should in general consent, provided the application is made in good faith and not for the purpose of delay, and to grant it will not result in unreasonably protracting the investigation. Dig. Opin. J. A. G., par. 1994.

Pleas to the jurisdiction.—An objection to the jurisdiction of the court—that is, of its power to try a particular case, as where, for example, the convening officer is the accuser or prosecutor, or is otherwise without power to constitute the court, or where the accused is not amenable to military jurisdiction—will properly be met by a formal plea to the jurisdiction, which must be decided by the court on the evidence submitted by both parties in the trial of the issue set forth in the defendant's plea. (*a*)

Pleas in abatement.—Objections to the charges or specifications in matters of *form* should be taken advantage of by special pleas in the nature of *pleas in abatement*, or, better, by motion to strike out. Such are objections to the specifications as inartificial, indefinite, or redundant; or as misnaming the accused (or other person required to be specified) or misdescribing him as to his rank or office; or as containing insufficient allegations of time or place, etc. In such cases the objection should be raised by a special plea in abatement, or by motion, in order that errors capable of amendment may be amended (*b*) on the spot by the judge-advocate, and—the plea of not guilty (or guilty) being then made—the trial may proceed in the usual manner. Objections of this class, not thus taken, will properly be considered as *waived* by the plea of guilty or not guilty, and their existence will not then affect the validity of the proceedings or sentence. Dig. Opin. J. A. G., par. 1995.

Where without preliminary objection the accused pleads guilty or not guilty to a specification, in which he is incorrectly named or described, such plea will be regarded as an admission by the accused of his identity with the person thus designated, and he can not thereafter object to the pleadings on account of misnomer or misdescription. Ibid.

A misnaming or misdescription of the rank of the accused in the specification should be taken advantage of by exception in the nature of a plea in abatement. Where not objected to, the error is immaterial after sentence, provided the accused is sufficiently identified by the plea, testimony, etc. It is not essential to state in a specification the *full* Christian name of the accused, or other party required to be indicated. Only such name or initial need be given as will be sufficient unmistakably to identify the party. Ibid., par. 706.

A failure, at the arraignment, to take notice of a variance between the form of a specification to which the accused is called upon to plead and such specification as it appeared in the copy of the charges served at his arrest is a waiver of the objection, and the same can not be taken advantage of at a subsequent stage of the proceedings. Ibid., par. 732.

Pardons.—The President is empowered, by Art. II, sec. 2, § 1, of the Constitution "to grant pardons for offences against the United States"; and a pardon, like a deed, must, in order to take effect, be delivered to and accepted by the party to whom it is granted (*c*). Dig. Opin. J. A. G., par. 1866.

Pleading.—For a pardon to be operative as a bar to prosecution, it must be formally pleaded—that is, the original instrument must be produced and submitted to the inspection of the court; this to enable the court to determine whether the offense with which the accused is charged and that named in the pardon are the same. If the pardon be by proclamation, the burden rests upon the accused of showing that his case falls within the terms of the amnesty set forth in the proclamation (U. S. *v.* Wilson, 7 Peters, 150). Where a conditional pardon is pleaded, the burden rests upon the accused of showing that all the conditions named therein have been ful-

---

[a] Objections to the charges and specifications on account of matters of *substance*—as that they do not contain the necessary allegations, or otherwise do not set forth facts constituting military offenses—should properly be made at the outset of the proceedings by a special plea in the nature of a *demurrer*, or they will in general be regarded as *waived*.

So, objections going to the legal *constitution* or *composition* of the court, or to its *jurisdiction*, should also properly be specially presented when the accused is first called upon to plead; valid objections of this *radical* character, however, are not *waived* if the accused, instead of submitting a special plea, pleads over to the merits, since *consent* can not make legal that which is illegal, or, in a criminal case, confer jurisdiction where none exists in law.

[b] Courts-martial have no authority to arraign a prisoner upon charges other than those upon which he has been ordered for trial, except what is manifestly a mere clerical error, unless such altered charges receive the sanction of the convening authority. Simmons, 458.

[c] U. S. *v.* Wilson, 7 Peters, 150; In re Du Puy, 3 Benedict, 307; VI Opin. Att. Gen., 403.

filled or otherwise complied with. Haym *v.* U. S., 7 Ct. Cls., 443; Waring *v.* U. S., ibid., 501; Scott *v.* U. S., 8 ibid., 457; Dig. Opin. J. A. G., par. 1997, 1998. See, also, the title "*The Pardoning Power,*" in the chapter entitled THE EXECUTIVE.

Constructive pardons.—While to restore to or place upon duty an officer or soldier, when under arrest or charges on account of an alleged offense, would not probably in this country, to the same extent as in England (*a*), be regarded as operating as a condonation of the offense, the promotion of an officer while under arrest on charges, has been viewed as a *constructive pardon* of the offense or offenses on account of which he has been arrested (*b*). But *held* that such a promotion could not operate as a pardon of *other* offenses committed by him, of the commission of which no knowledge was had by the Executive at the date of the promotion. Dig. Opin. J. A. G., par. 1873.

While ordering or authorizing an officer or soldier, when under *sentence,* to exercise a command or perform any other duty inconsistent with the continued execution of his sentence, has been viewed as a constructive pardon, (*c*) *held* that to allow an officer, while under a sentence of suspension from rank, to perform certain slight duties in closing his accounts with the United States could not be regarded as having any such effect. Ibid.

An officer charged with certain offenses in violation of specific articles of war, pleaded as to two specifications that he had been pardoned by his post commander. The pleas in bar, thus submitted by the accused, were sustained by the court, but were disapproved by the reviewing authority (the Secretary of War), upon the ground that the post commander was without authority to grant pardons in cases in which commissioned officers were the offenders. G. C. M. O., No. 13, War Dept., 1871.

Conditional pardons.—It is settled that a pardon may be *conditional*—may be granted upon a condition precedent or subsequent. (*d*) Thus, where the President, by his proclamation of March 11, 1865, granted a pardon to all deserters "on condition that" they duly returned (within a certain time stated) to their regiments, etc., and served the remainder of their original terms and, in addition, a period equal to the time lost by desertion—*held* that a soldier who duly returned under this proclamation, but after remaining with his regiment a portion of the period indicated, abandoned the service and went to his home, was liable (the legal period of limitation fixed by the one hundred and third article of war not having expired) to be brought to trial for his original desertion; the *condition subsequent* upon which his pardon for the same had been extended not having been performed.

Statutes which operate to trespass upon or diminish the constitutional power of the President to pardon offenses against the United States are strictly construed in their application. Acts of mercy, therefore, which may be appropriate when proceeding from the President, in whom the pardoning power is vested by the Constitution, are otherwise regarded when they originate with a military officer whose power in respect to pardons is measured by the express terms of the statutes which confer it.

Judgments on special pleas.—Where a special plea is set up in behalf of the defendant as a plea to the jurisdiction, or in bar of trial, or in abatement, or a special plea in the nature of a demurrer, and the court, after a trial of the issue outlined in the plea, decides that it has not been sustained, the judgment of the court is required to be that the accused answer over—that is, that he plead the "general issue" of guilty or not guilty.

Statutes of limitation.—A limitation in point of time in military offenses is properly matter of defense to be specially pleaded and proved. By pleading guilty the accused is assumed to waive the right to plead the limitation by a special plea in bar. But under a plea of not guilty the limitation may be taken advantage of by evidence showing that it has taken effect. Dig. Opin. J. A. G., par. 320; in re Bogart, 2 Sawyer, 397; in re White, 17 Fed. Rep., 723; in re Davison, 21 ibid., 18; in re Zimmerman, 30 ibid., 17; and compare U. S. *v.* Cooke, 17 Wallace, 168.

Facts and circumstances which are properly matters of evidence are not properly legitimate subjects of pleas; as, for example, circumstances going to extenuate the offense. Thus held, that good conduct of the accused in battle subsequent to the commission of the offense charged could not properly be presented in the form of a plea. So held that the fact that the charge was preferred through personal hostility to the accused was not a matter for plea, but, if desired to be taken advantage of, should be offered in evidence. Dig. Opin. J. A. G., par. 1996.

Defense at trial.—In order that he may not be embarrassed in making his defense,

---

[a] See Clode, Mil. Forces of the Crown, vol. 1, p. 173; Prendergast, 244–5, in connection with the cases cited of Sir Walter Raleigh, Lord Lucan, Captain Achison, etc.

[b] See VIII Opins. of Attys. Gen., 237.

[c] VI Opin. Att. Gen., 714.

[d] Ex parte Wells, 18 Howard, 307; Commonwealth *v.* Haggarty, 4 Brewst., 326; VI Opins. Attys. Gen., 405.

the accused party on trial before a court-martial should be subjected to no restraint other than such as may be necessary to enforce his presence or prevent disorderly conduct on his part. Except, therefore, in an extreme case, as where, the accused being charged with an aggravated and heinous offense, there is reasonable ground to believe that he will attempt to escape or to commit acts of violence, the keeping or placing of irons upon him while before the court will not be justified. (*a*) Even in such a case it will be preferable to place ana dequate guard over him. (*b*) Dig. Opin. J. A. G., par. 1047.

The fact that the accused is an officer of high rank should not be regarded as constituting a ground for allowing him any special right or privilege in his defense before a court-martial. The administration of justice by a military, as by a civil court, must be strictly impartial, or it ceases to be pure. All persons on trial by the one species of tribunal, as by the other, are deemed to be equal before the law. Ibid., par. 1049.

The judge-advocate should advise the accused, especially when ignorant and unassisted by counsel, of his rights in defense—particularly as to his right, if it exists in the case, to plead the statute of limitations, and of his right to testify in his own behalf. A failure to do so, however, will not affect the legal validity of the proceedings; though if it appear that the accused was actually ignorant of these rights, the omission may be ground for a mitigation of sentence. Ibid., par. 1533.

It is the duty of the court to see that injustice is not done the accused by the admission on the trial of improper testimony prejudicing his defense, or unfairly tending to aggravate the misconduct charged. In the interests of justice, therefore, the court may exclude such testimony, although its admission may not be objected to on the part of the accused. On a similar ground or for the purpose of fully informing itself of the facts, the court may, in its discretion, allow the introduction, by either side, of material testimony after the case has been formally closed. (*c*) Such a proceeding, however, must be of course exceptional, and a party should not be permitted to offer testimony at this stage unless he exhibits good reason for not having produced it at the usual and proper time.

An accused, prior to arraignment, even if in close arrest, should be allowed to have interviews with such counsel, military or civil, as he may have selected. So, his counsel should be permitted to have interviews with any accessible military person whom it may be proposed to use as a material witness, or whose knowledge of facts may be useful to the accused in preparing for trial. Ibid., par. 986.

ARGUMENTS AND STATEMENTS.

Defense.—In any case tried by court-martial the accused may, if he thinks proper (and whether or not he has taken the stand as a witness), (*d*) present to the court a statement or address, either verbal or in writing. Such statement is not *evidence;* (*e*) as a personal defense or argument, however, it may and properly should be taken into consideration by the court. Dig. Opin. J. A. G., par. 2352.

While the statement is not evidence, and the accused is not in general to be held bound by the argumentative declarations contained in the same, yet, if he clearly and unequivocally admits therein *facts* material to the prosecution, such may properly be viewed by the court and reviewing officer as practically facts in the case. (*f*) So, where the accused, in his statement, fully admits that certain facts existed substantially as proved, he may be regarded as waiving objection to any irregularity in the form of the proof of the same. Ibid., par. 2353.

A large freedom of expression in his statement to the court is allowable to an accused, especially in his comments upon the evidence. So, an accused may be permitted to reflect within reasonable limits upon the apparent *animus* of his accuser or

---

[*a*] Compare G. C. M. O. 62, Dept. of the Missouri, 1877; do. 55, id., 1879; and—as to the civil practice—Lee *v.* State, 51 Miss., 566; People *v.* Harrington, 42 Cal., 175.

[*b*] Arraignment means the calling the offender to the bar of the court to answer the matter he is charged with, and in doing which the law directs (and, indeed, common compassion points out to us) that every person ought to be used with all the humanity and gentleness which is consistent with the nature of the thing, and under no terror or uneasiness than what proceeds from a sense of his guilt and the misfortune of his present circumstances, and, therefore, ought not to be brought to the bar in a contumelious manner, though charged with the highest crimes, as with his hands tied together, or any mark of ignominy and reproach, nor even with fetters on his feet, unless there be some danger of an escape or rescue. Adye, 129, 130.

[*c*] Compare Eberhardt *v.* State, 47 Ga., 598; and see the Trial, by court-martial, of B. G. Harris (Ex. Doc. No. 14, Ho. of Reps., 39th Cong., 1st sess., p. 25), where, on the day on which the accused was to present his final argument to the court, and which was two days after the formal closing of the case, the defense was allowed to introduce new testimony on the merits.

[*d*] See G. C. M. O. 3, Dept. of the Missouri, 1880.

[*e*] That a sworn statement can not be made to serve as the testimony of the accused as a *witness* under the act of March 16, 1878. See Dig. Opin. J. A. G., 749, par. 2.

[*f*] Similarly as a fact clearly admitted or assumed in the course of a trial may be considered as much in the case as if it had been expressly proved. See Paige *v.* Fazackerly, 36 Barb., 392.

WITNESSES.[1]

Par.
1809. Oath.
1810. Process of attachment.
1811. Refusal of civilian witness to testify.
1812. Fees; civilian in Government employ.

Par.
1813. The same; not in Government employ.
1814. Return journeys.

Oath of witnesses.
92 Art. of War.

1809. All persons who give evidence before a court-martial shall be examined on oath, or affirmation, in the following form: "*You swear (or affirm) that the evidence you shall give, in the case now in hearing, shall be the truth, the whole truth, and nothing but the truth. So help you God.*"

---

prosecutor, though a superior officer and of high rank. But an attack upon such a superior, of a *personal* character and not apposite to the facts of the case, is not legitimate; nor is language of marked disrespect employed toward the court. Matter of this description may indeed be required by the court to be omitted by the accused as a condition to his continuing his address or filing it with the record. Ibid., par. 2354.

Judge-advocate.—It is settled in our military procedure that the *closing* statement or argument, where addresses are presented on both sides, shall be made on the part of the prosecution. The judge-advocate, however, may, and, in practice, not rarely does, waive the right of offering any argument or remarks in reply to the address of the accused. On the other hand, the accused may waive the right, and the judge-advocate alone present a "statement."[a] Ibid., par. 2355.

In the trial of a commissioned officer in 1872 the judge-advocate proposed to present an argument in behalf of the prosecution, but his request was denied by the court on the ground that no statement or address had been submitted by the accused. In reviewing the case the Secretary of War disapproved the action of the court in this respect on the ground that "the judge-advocate has an undoubted right at the close of the trial to address the court for the purpose of commenting on the whole evidence and the law applicable to it; and this right is in no degree abridged by a waiver of the accused of his like privilege." G. C. M. O. No. 111, War Dept., 1872.

In the case of a commissioned officer tried in 1872 and sentenced to dismissal, the court refused to permit certain witnesses to be summoned at the request of the accused. In disapproving the action of the court in this respect the court was reminded by the reviewing authority that "the least denial to an accused person of any proper facility or opportunity for defense can serve only to defeat the ends of justice and may often lend impunity to guilt." G. C. M. O. No. 21, War Dept., 1872. In the case published in G. C. M. O. No. 24, War Dept., 1872, the exclusion of a single question caused the original reviewing authority (the department commander) to disapprove the finding upon an important specification. "Courts-martial had much better err on the side of liberality toward a prisoner than, by endeavoring to solve nice and technical refinements of the laws of evidence, assume the risk of injuriously denying him a proper latitude for defense." G. C. M. O. No. 32, War Dept., 1872; G. C. M. O. No. 7, War Dept., 1873; G. C. M. O. No. 25, ibid., 1875.

[1] *Military witnesses.*—The attendance of military witnesses is obtained by the issue of orders or instructions by the post, department, or other proper military commander, upon the request of the judge-advocate made in pursuance of paragraphs 1023 and 1024, Army Regulations of 1901.

An officer or enlisted man who receives a summons to attend as a witness before any military court, board, civil court, or other tribunal competent to issue subpœnas, which is sitting beyond the limits of the department where he is serving, will, before starting to obey the summons, forward it through the proper channel to his department commander, that necessary orders, or authority to obey a civil process, may be given. In urgent cases, or when the public interest would be liable to suffer by delay, a post commander may authorize immediate departure, reporting his action and reasons therefor to the department commander. Par. 1025, Army Regulations of 1901.

---

[a] The judge-advocate in our practice is entitled to the closing argument or address to the court, and he may present an address although the accused waives his right to present any; the function of the judge-advocate, at this stage of the proceedings, not being confined merely to a *replying* to the accused. The judge-advocate in his address is not authorized to read to the court evidence or written statements not introduced upon the trial and which the accused has had no opportunity to controvert or comment upon. Dig. Opin. J. A. G., par. 1542.

Civilian witnesses.—The ordinary process for obtaining the attendance of a civilian witness is the writ of subpœna. This is a judicial writ commanding the witness to appear in court, on a day therein mentioned, to testify in the particular case named in the writ. In the practice of the Federal courts and that of courts-martial, the command of the writ runs in the name of the President (see the form of subpœna on page 128, Manual for Courts-Martial), and the writ is addressed, not to the officer who serves it, but to the witness himself. For this reason the writ may be served by any person of competent age and discretion. As there is no appropriation, however, which is available for the payment of officers of court, or for the compensation of civilians for the service of subpœnas, they should be served by military persons.

A summons may legally be served either by a military or a civil person, (*a*) but, for the reason above stated, will in general preferably be served by an officer or noncommissioned officer of the Army. A judge-advocate or a commanding or other officer to whom a summons is sent for service will not be authorized, by employing for the purpose a U. S. marshal or deputy marshal, or other civil official, to commit the United States to the payment of fees to such official. The action, however, of a judge-advocate in employing a deputy marshal to serve a summons, where apparently the service could not otherwise be so effectually or economically made, has in a few cases been so far ratified by the Secretary of War as to allow, out of the appropriation for army contingencies, the payment of a small and reasonable account of charges rendered by such official. Dig. Opin. J. A. G., par. 2470.

Service, to be legal or sufficient, must be personal; to constitute such service the original writ of subpœna must be delivered or read to the witness by the person deputed to serve it. Return of service is made by indorsing the fact of service on the back of the duplicate subpœna (for form of such affidavit of service, see p. 129, Manual for Courts-Martial). Service, to be sufficient as the basis for a writ of attachment, must be personal and must be made in the manner above described; to warrant the mere payment of fees, however, service by telegraph or in any other form will ordinarily suffice. See MANUAL FOR COURTS-MARTIAL.

Except where their testimony will be merely cumulative, and will clearly add nothing whatever to the strength of the defense, the accused is in general entitled to have any and all material witnesses summoned to testify in his behalf. (*b*) A prompt obedience to a summons is incumbent upon all witnesses, nor is a commanding or superior officer in general authorized to place any obstacles in the way of the prompt attendance, as a witness, of an inferior duly summoned or ordered to attend as such. Where the judge-advocate has declined to summon a witness for the accused, for the reason that he is not "satisfied" (in the words of par. 922 of the Army Regulations) that his testimony is "material and necessary to the ends of justice," the *court* may, in its discretion, direct him to be summoned. The court, however, will not in general properly sanction the summoning of a witness where it is not probable that his attendance can be secured within a reasonable time and his deposition legally be taken pursuant to the 91st Article of War. Dig. Opin. J. A. G., par. 2467.

In military law an accused party can not be deemed to be entitled to have a witness summoned from a distance whose military or administrative duties are of such a character that they can not be left without serious prejudice to the public interests. Article VI of the amendments to the Constitution, declaring that the accused shall be entitled "to be confronted with the witnesses against him," applies only to cases before the United States courts. (*c*) Thus, where the offense charged is not capital, and a deposition may therefore legally be taken under the 91st Article of War, the Secretary of War will not in general authorize the personal attendance at the place of trial of a witness whose office or duty makes it necessary or most important that he should remain elsewhere. Ibid., par. 2468.

The subpœna duces tecum.—In addition to the ordinary writ of subpœna (*ad testificandum*) for obtaining the attendance of a civilian witness, the judge-advocate is empowered, in a proper case, to issue writs of *subpœna duces tecum.* It is the purpose of this writ to secure the production of documents or writings which are in possession of a witness and are deemed, by either party, to be material to his case. This form of subpœna is issued in the same manner and under the same conditions

---

[a] See General Orders, No. 93, War Department, 1868.
[b] See Dig. Opin. J. A. G., par. 2313, note 1.
[c] See G. C. M. O., 21 and 24, War Department, 1872. Ibid., No. 128, 1876.

Witnesses compelled to attend. Mar. 3, 1863, c. 79, s. 25, v. 12, p. 754; June 23, 1874, c. 458, s. 2, v. 18, p. 244. Sec. 1202, R.S.

1810. Every judge-advocate of a court-martial shall have power to issue the like process to compel witnesses to appear and testify which courts of criminal jurisdiction within the State, Territory, or District where such military courts shall be ordered to sit may lawfully issue.[1]

---

as the *subpœna ad testificandum*, and contains a clause of requisition in which the writing or document which is desired to be produced shall be particularly described. The operation of this writ does not extend to the production of any objects or things save documents or written instruments.

A *subpœna duces tecum* can only be used to compel the production of documentary evidence, books, papers, accounts, and the like. In re Shephard, 3 Fed. Rep., 12; 3 Starkie on Evidence, 172; Arny *v.* Long, 9 East, 473.

Telegraphic messages in the hands of telegraph companies are not privileged communications, so far as the companies are concerned, and their production will be compelled by *subpœna duces tecum* in aid of an investigation by a grand jury of supposed criminal acts of the senders and receivers of the messages, with which such companies and their officers are in no way connected. In re Storrow, 3 Fed. Rep., 564; Southern Law Review, vol. v (n. s.), 473; ex parte Brown, 72 Mo., 83; U. S. *v.* Babcock, 3 Dill., 566; U. S. *v.* Hunter, 15 Fed. Rep., 712; State *v.* Litchfield, 58 Maine, 267.

In view of the embarrassment which must generally attend the proof, before a court-martial, of the sending or receipt of telegraphic messages by means of a resort, by *subpœna duces tecum*, to the originals in possession of the telegraph company, (*a*) *advised* that the written or printed copy furnished by the company and received by the person to whom it is addressed should in general be admitted in evidence by a court-martial in the absence of circumstances casting a reasonable doubt upon its genuineness or correctness. But where it is necessary to prove that a telegram which was not received, or the receipt of which is denied and not proven, was actually duly sent, the operator or proper official of the company, or other person cognizant of the fact of sending, should be summoned as a witness. Dig. Opin. J. A. G., par. 1295.

A court-martial (by *subpœna duces tecum*, through the judge-advocate) may summon a telegraph operator to appear before it, bringing with him a certain telegraphic dispatch. But it is beyond the power of such court to require such witness against his will to surrender the dispatch, or a copy, to be used in evidence. Ibid., par. 1296.

[1] The authority to issue process to compel civilian witnesses to appear and testify is vested, by section 1202, Revised Statutes, in "every judge-advocate of a court-martial." The present statute, however (unlike the original form), does not extend the authority to recorders of courts of inquiry. Further, the authority, being vested exclusively and independently in the judge-advocate, can not be exercised by the court. The attachment is thus not a writ or process of the court, but simply a compulsory instrumentality placed at the disposition of the judge-advocate as the prosecuting official representing the United States. Dig. Opin. J. A. G., par. 2478.

Section 1202, Revised Statutes, authorizes only judge-advocates of courts-martial to issue process to compel the attendance of witnesses. The court itself, general or inferior, has no such power. Ibid., par. 1551.

To authorize a resort to an attachment, there must have been a formal summons, duly issued and served upon the witness, and not complied with. Ibid., 2479.

A judge-advocate can not properly direct an attachment to a United States marshal or deputy marshal or other civil official. Some military officer or person should be designated by him, or detailed for the purpose by superior authority. In executing the attachment, the needful force may be employed, but no more. Ibid., par. 2481.

The judge-advocate is authorized only to initiate the process of attachment. The statute does not specify by whom it shall be executed, and the judge-advocate is not authorized to command any officer or person to serve it, nor has the court any such power. Ibid., par. 1551.

Judge-advocates of military posts, in issuing process under section 1202 of the Revised Statutes, to compel the attendance of witnesses, will formally direct the

---

[a] The subject of the extent of the authority of the courts to compel telegraph companies to produce original private telegrams for use in evidence is most fully treated in an essay by Henry Hitchcock, esq., on the "Inviolability of telegrams," published in the Southern Law Review for October, 1879.

Refusal to appear or testify.
Mar. 2, 1901, v. 31, p. 950.

1811. Every person not belonging to the Army of the United States who, being duly subpœnaed to appear as a witness before a general court-martial of the Army, willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or produce documentary evidence which such person may have been legally subpœnaed to produce, shall be deemed guilty of a misdemeanor, for which such person shall be punished on information in the district court of the United States; and it shall be the duty of the United States district attorney, on the certification of the facts to him by the general court-martial, to file an information against and prosecute the person so offending, and the punishment of such person, on conviction, shall be a fine of not more than five hundred dollars or imprisonment not to exceed six months, or both, at the discretion of the court: *Provided*, That this shall not apply to persons residing beyond the State, Territory, or District in which such general court-martial is held, and that the fees of such witness, and his mileage at the rates provided for witnesses in the United States district court for said State, Territory, or District shall be duly paid or tendered said witness, such amounts to be paid by the Pay Department of the Army out of the appropriation for compensation of witnesses: *Provided*, That no witness shall be compelled to incriminate himself or to answer any question which may tend to incriminate or degrade him.[1] *Act of March 2, 1901* (*31 Stat. L.*, 950).

LIBRARY OF THE UNIVERSITY OF CALIFORNIA

---

same to an officer designated by the department commander to execute it. The nearest military commander will furnish the necessary military force for the execution of the process, if force be required. A subpœna may be served by any person. Par. 1026, Army Regulations of 1901. See also MANUAL FOR COURTS-MARTIAL, pp. 31–34, 130.

A judge-advocate, having attached a civilian witness and had him brought to the place of the court, detained him one hour in the guardhouse before bringing him before the court. For this he was indicted for false imprisonment in a United States district court in Texas. *Held*, that his action was warranted under section 1202, Revised Statutes, and *advised* that the Attorney-General be requested to cause the prosecution to be discontinued. Dig. Opin. J. A. G., par. 1552.

The *form* of the process of attachment should, under the statute conferring authority to issue it, be "like" that employed in the procedure of the criminal courts, or a criminal court, of the State, Territory, or District (of Columbia) in which the court-martial is ordered to sit. Where there is no special form of process for the attachment of witnesses in criminal cases in use in the State, the statute will be sufficiently complied with if the general form of attachment of a witness for contempt for not obeying a summons be substantially followed. For form of attachment, see MANUAL FOR COURTS-MARTIAL, p. 161.

[1] For procedure in the case of a civilian witness under the foregoing enactment see paragraph 1067, Army Regulations of 1901.

FEES OF WITNESSES.[1]

Civilians in employ of the Government. Par. 1066, A. R. 1901.

1812. Civilians in the employ of the Government when traveling upon summons as witnesses before military courts are entitled to transportation in kind from their place of residence to the place where the court is in session and return. If no transportation be furnished they are entitled to reimbursement of the cost of travel actually performed by the shortest usually traveled route, including transfers to and from railway stations, at rates not exceeding fifty cents for each transfer, and the cost of a double berth in a sleeping car or steamer when an extra charge is made therefor. They are also entitled to reimbursement of the actual cost of meals and rooms at a rate not exceeding three dollars per day for each day actually and unavoidably consumed in travel or in attendance upon the court under the order or summons. No allowance will be made to them when attendance upon court does not require them to leave their stations. *Par. 1066, A. R. 1901.*

Civilians not in Government employ. Par. 1067, A. R. 1901.

1813. A civilian not in Government employ duly summoned to appear as a witness before a military court will receive one dollar and fifty cents for each day actually and unavoidably consumed in travel or in attendance upon the court under the summons, and five cents a mile for going from his place of residence to the place of trial or hearing and five cents a mile for returning. Civilian witnesses will be paid by the Pay Department.[2] *Par. 1067, ibid.*

---

[1] In view of the provision of section 1248, Revised Statutes, investing retiring boards with such powers of courts-martial as may be necessary to enable them to inquire into and determine the facts touching the disability of officers whose cases are referred to them, *held* that a retiring board might legally cause material witnesses to be summoned to attend its sessions, and that witnesses so summoned would probably be entitled to the fees of witnesses before courts-martial. Dig. Opin. J. A. G., 756, par. 25.

Held that parties who appeared and testified before, and at the instance of, an officer charged with the preliminary investigation of a case, but were not required to attend at a subsequent trial, were not legally entitled to witness fees. Ibid., par. 2477.

The compensation allowed by the Secretary of War for witnesses summoned as experts in handwriting before a court-martial (see Smith *v.* U. S., 24 Ct. Cls., 209), *held* payable out of the annual appropriation "for compensation of witnesses attending upon courts-martial and courts of inquiry." Ibid., par. 2483.

Held that duly attending by a civilian witness before a duly authorized official to give a deposition, to be used in evidence on a military trial, was to be regarded as practically equivalent to attending a court-martial, and that the deponent was entitled to be paid the usual allowances (i. e., the same as those of witnesses appearing before the court), out of the regular appropriation for the "compensation of witnesses attending before courts-martial," etc. Ibid., par. 2484.

[2] Neither the appropriation "for the compensation of witnesses" attending military courts, nor the appropriation for the contingent expenses of the Army, is applicable to the payment of allowances, as witnesses before civil courts, of officers or soldiers of the Army, or of civil employees of the military establishment. For such allowances they must look to the laws and appropriations fixing and authorizing the payment of witness fees in these courts. Dig. Opin. J. A. G., par. 2486. See paragraph 1070, Army Regulations of 1901.

Return journeys. Par. 1068, A. R. 1901.

1814. The charges for return journeys of witnesses will be made upon the basis of the actual charges allowed for travel to the court, and the entire account thus completed will be paid upon discharge from attendance, without waiting for completion of return travel.[1] *Par. 1068 ibid.*

EVIDENCE.

Par.
1814. To be given under oath.
1815. No exclusion for color, interest, etc.
1816. Administration of oaths.
1817. Testimony of accused persons.
1818. Documentary evidence; copies of records in Executive Departments.
1819. The same; records in Treasury Department.
Par.
1820. The same; transcripts from books.
1821. The same.
1822. Returns in return's office.
1823. Journals of Congress.
1824. Consular records.
1825. Legislative acts; judicial proceedings.
1826. Records of State officers, etc.
1827. Laws of the United States.

Evidence to be given under oath. 92 Art. of War.

1814. All persons who give evidence before a court-martial shall be examined on oath, or affirmation, in the following form: "*You swear (or affirm) that the evidence you shall give, in the case now in hearing, shall be the truth, the whole truth, and nothing but the truth. So help you God.*"[2] *Ninety-second Article of War.*

---

[1] The items of expenditure authorized in paragraphs 1066 and 1067 (Army Regulations) will be set forth in detail and made a part of each voucher for reimbursement. No other items will be allowed. The correctness of the items will be attested by the affidavit of the witness, to be made when practicable before the judge-advocate, and the voucher will be accompanied by the original summons or a duly certified copy thereof. The certificate of the judge-advocate will be evidence of the fact and period of attendance, and will be made upon the voucher. Par. 1069, A. R. 1901.

[2] *Oath.*—This article prescribes a single specific form of oath to be taken by all witnesses. The Constitution, however (article 1 of amendments), has provided that Congress shall make no law prohibiting the free exercise of religion. Where, therefore, the prescribed form is not in accordance with the religious tenets of a witness, he should be permitted to be sworn according to the ceremonies of his own faith or as he may deem binding on his conscience.

The article does not prescribe by whom the oath shall be administered. By the custom of the service it is administered by the judge-advocate. (And see, now, the provision of the act of July 27, 1892, sec. 4.) When the judge-advocate himself takes the witness stand, he is properly sworn by the president of the court. Dig. Opin. J. A. G., par. 274.

A witness who has once been sworn and has testified is not required to be resworn on being subsequently recalled to the stand by either party. The reswearing, however, of such a witness will not affect the legal validity of the proceedings or sentence.

A witness who has given his testimony should in general be allowed to modify the same where he desires to do so in a material particular. But where the court has refused to permit a witness to correct his statement as recorded, such refusal need not induce a disapproval of the proceedings unless it appear that the rights of the accused have thus been prejudiced. Ibid., par. 2472.

Witnesses should not in general be admitted to the court room, but should be kept as far as practicable apart, until required to appear and give their testimony. But that a witness or witnesses may have been permitted to remain in the court room and hear the testimony of witnesses previously called can not affect the legality of the proceedings.

A witness can have no authority to discharge or relieve himself from attendance on the ground that the testimony desired of him is immaterial or for any other reason. In the civil practice such an act would be a grave contempt of court. It is for the court to judge as to the materiality or pertinency of the evidence of witnesses, and unless a witness has been determined by the court to be incompetent or his testimony to be inadmissible, he should remain and stand his examination till informed by the court or judge-advocate that his attendance is no longer required in the case. Ibid., par. 2473. See also, in this connection, MANUAL FOR COURTS-MARTIAL.

COMPETENCY OF WITNESSES.

The rules governing the competency of witnesses before the criminal courts of the United States and the States are, where apposite, generally (though not always necessarily) followed in the practice of courts-martial. Ibid., par. 2460. See also MANUAL FOR COURTS-MARTIAL, p. 40.

The law by which, in the opinion of this court, the admissibility of testimony in criminal cases must be determined is the law of the State as it was when the courts of the United States were established by the judiciary act of 1789. The courts of the United States have uniformly acted upon this construction of these acts of Congress, and it has thus been sanctioned by a practice of sixty years. U. S. *v.* Reid, 12 How., 361, 363, 366; Logan *v.* U. S., 144 U. S., 263, 301.

A wife is not a competent witness for or against a person accused of crime, on his trial. Comment on her absence by the district attorney *held* to be reversible error. Graves *v.* U. S., 150 U. S., 118; U. S. *v.* Jones, 32 Fed. Rep., 569.

It has been uniformly *held* that the wife of a person on trial before a court-martial could not properly be admitted as a witness for or against him;(*a*) and the statute authorizing accused parties to testify does not affect this rule. The wife, however, of an officer or soldier may be admitted to testify in his case before a court of inquiry, the proceeding before such a body not being a trial, but an investigation merely. Where a court-martial refused to admit in evidence (as being incompetent) the testimony of the wife of the prosecuting witness, *held* that its action was entirely erroneous, no legal objection existing to the competency of such a person. Dig. Opin. J. A. G., par. 2462. See also MANUAL FOR COURTS-MARTIAL.

A wife is not a competent witness to prove a charge of failing to support her, for which her husband is on trial. Ibid., par. 1305.

It is no objection to the competency of a witness that he is the officer upon whom will devolve the duty of reviewing authority when the proceedings are terminated. Ibid., par. 2464.

An insane person is no more competent as a witness before a court-martial than at common law. Testimony admitted of a person shown to be insane should be stricken out on motion made.

A person who is insane at the time is incompetent as a witness. An objection, however, to a witness on account of alleged insanity will not properly be allowed, unless sustained by clear proof, a man being always presumed to be sane till prover to be otherwise. Ibid., par. 2466.

A boy of five is not, as a matter of law, absolutely disqualified as a witness; and in this case the disclosures on the *voir dire* were sufficient to authorize his admission to testify. Wheeler *v.* U. S., 159 U. S., 523; Brasier's case, 1 Leach Crim. Law, 199; 1 Greenleaf, sec. 367; 1 Wharton, Evidence, secs. 398–400; 1 Best, secs. 155, 156; State *v.* Juneau, 88 Wisconsin, 180; Ridenhour *v.* Kansas City Cable Co., 102 Missouri, 270; McGuff *v.* State, 88 Alabama, 147; State *v.* Levy, 230 Minnesota, 104; Commonwealth *v.* Mullins, 2 Allen (Mass.), 295; Peterson *v.* State, 47 Georgia, 524; State *v.* Edwards, 79 North Carolina, 48; State *v.* Jackson, 9 Oregon, 457; Blackwell *v.* State, 11 Indiana, 196.

It is no objection to the competency of a witness that his name is not on the list of witnesses appended to the charges when served. The prosecution is not obliged to furnish any list of witnesses, nor, where one is furnished, to confine itself to the witnesses thus specified. The fact that material testimony is given by an unexpected witness may indeed constitute ground for an application by the accused (under article 93) for further time for the preparation of his defense. Dig. Opin. J. A. G., par. 2465.

The fact that a party is a public enemy of the United States, or has engaged in giving aid to the enemy, does not affect the competency of his testimony as a witness before a court-martial. Where testifying, however, in time of war, either in favor of a person in the enemy's service or an ally of or sympathizer with the enemy, or against a Federal officer or soldier, his statements (like those of an accomplice)

---

[a] Nor will the testimony of the wife of an accused be admissible in favor of or against a party jointly charged with him, where her testimony will be material to the merits of the question of the guilt or innocence of her husband. See Territory *v.* Paul, 2 Montana, 314.

are ordinarily to be received with caution unless corroborated. The fact that a party is under a political disability is not one which goes to his competency if offered as a witness. So the fact that a witness has been convicted of desertion may impair his credibility, but can not affect his competency. Ibid., par. 1297.

Desertion is not a felony and does not render a witness incompetent at common law or before a court-martial. Nor does the loss of citizenship upon conviction of desertion, under sections 1996 and 1998, Revised Statutes, have such effect, the competency of a witness not depending upon his citizenship. A pardon of a person thus convicted would not, therefore, add to his competency. But where it was proposed to introduce such a person as a material witness for the prosecution in an important case, *advised* that it would be desirable to remit the unexecuted portion of his sentence, if any. Ibid., par. 1298.

Where a conviction (of rape) rested mainly on the testimony of the victim, a child of 8 years of age, *held* that the competency of the witness was doubtful, and that the trial should have been suspended and the child instructed.(*a*) Where a court-martial received the testimony of a female child of 3½ years without swearing her, *held* that it had wholly exceeded its authority, unsworn testimony being entirely incompetent in any case. Ibid., par. 1306.

The president or any member of a court-martial, as also the judge-advocate, may legally give testimony before the court. That the court, at the time of a member's testifying, is composed of but five members will not affect the validity of the proceedings, since in so testifying he does not cease to be a member. It is in general, however, most undesirable that the judge-advocate, and still more that a member, should appear in the capacity of a witness, except perhaps where the evidence to be given relates simply to the good character or record of the accused. (*b*) Ibid., par. 2463.

MISCELLANEOUS PROVISIONS.

Courts-martial, in the absence of any specific statutory rules, are in general governed by the rules of evidence of the common law.

Courts-martial should in general follow, so far as opposite to military cases, the rules of evidence observed by the civil courts, and especially the courts of the United States, in criminal cases. (*c*) They are not bound, however, by any statute in this particular, and it is thus open to them, in the interests of justice, to apply these rules with more indulgence than the civil courts—to allow, for example, more latitude in the introduction of testimony and in the examination and cross-examination of witnesses than is commonly permitted by the latter tribunals. In such particulars, as persons on trial by courts-martial are ordinarily not versed in legal science or practice, a liberal course should in general be pursued, and an overtechnicality be avoided.(*d*) Dig. Opin. J. A. G., par. 1285.

The law by which the admissibility of testimony in criminal cases in the courts of the United States must be determined is the law of the State, as it was when these courts were established by the judiciary act of 1789. They have uniformly acted upon this construction of the judiciary act of 1789 and the crimes act of 1790, and it has thus been sanctioned by a practice of sixty years. U. S. *v.* Reid, 12 How., 361, 363, 366; Logan *v.* U. S., 144 U. S., 263, 300; xvii, Opin. Att. Gen., 310.

How applied.—The rules of evidence should be applied by military courts irrespective of the rank of the person to be affected. Thus a witness for the prosecution, whatever be his rank or office, may always be asked, on cross-examination, whether he has not expressed animosity toward the accused, as well as whether he has not on a previous occasion made a statement contradictory to or materially different from that embraced in his testimony. Such questions are admissible by the established

---

[*a*] 1 Greenleaf on Evidence, sec. 367.

[*b*] In the British service until the year 1805 oaths were only administered to witnesses before general courts-martial. In that year, but against the advice of many general officers (including the Duke of Wellington), the provisions of the article were extended in this respect to the minor courts. Clode, Mil. Law, 126.

[*c*] See 3 Greenl. Ev., sec. 476; Lebanon *v.* Heath, 47 N. Hamp., 359; People *v.* Van Allen, 55 N. York, 39; II Opin. Atty. Gen., 343; Grant *v.* Gould, 2 H. Black., 87; 1 McArthur, 47; Halcourt, 76; De Hart, 334; O'Brien, 169; G. O. 51, Middle Department, 1865; G. C. M. O. 60, Department of Texas, 1879; G. C. M. O. 3, 52, Department of the East, 1880. While the Federal courts sitting within a State must enforce the provisions of a local statute prescribing rules of evidence, unless it is in conflict with some law of the United States regulating the same subject, yet the decisions of the State courts construing common-law rules of evidence are not obligatory on the Federal courts, though they will be followed when the question at issue is balanced with doubt. Union Pacific R. R. Co. *v.* Yates, 79 Fed. Rep., 584; McNeill *v.* Holbrook, 12 Peters, 84, 88, 89; Wright *v.* Bales, 2 Black, 535; Porter *v.* Bank, 102 U. S., 163, 165; Burgess *v.* Seligman, 107, U. S., 20; Railroad Co. *v.* Baugh, 149, U. S., 368; Ryan *v.* Staples, 76 Fed. Rep., 721, 727; Railroad Co. *v.* Hogan, 3 Fed. Rep., 102.

[*d*] Compare the views expressed in G. C. M. O. 32, War Department, 1872; G. C. M. O. 23, Department of Texas, 1873; G. C. M. O. 60, Department of California, 1873.

law of evidence, and imply no disrespect to the witness, nor can the witness properly decline to answer them on the ground that it is disrespectful to him thus to attempt to discredit him.(*a*) Dig. Opin. J. A. G., par. 1286.

Character.—Evidence of the good character, record, and services of the accused as an officer or soldier is admissible in all military cases without distinction—in cases where the sentence is mandatory as well as those where it is discretionary, upon conviction. For, where such evidence can not avail to affect the measure of punishment, it may yet from the basis of a recommendation by the members of the court, or induce favorable action by the reviewing officer whose approval is necessary to the execution of the sentence. Where such evidence is introduced, the prosecution may offer counter testimony, but it is an established rule of evidence that the prosecution can not attack the character of the accused till the latter has introduced evidence to sustain it, and has thus put it in issue. Ibid., par. 1288.

It is in general competent, on trials by court-martial, for the accused to put in evidence any facts going to extenuate the offense and reduce the punishment, as the fact that he has been held in arrest or confinement an unusual period before trial, the fact that he has already been subjected to punishment or special discipline on account of his offense, the fact that his act was in a measure sanctioned by the act or practice of superior authority, etc. Ibid., par. 1301.

On the trial of a person accused of the commission of crime, he may, without offering himself as a witness, call witnesses to show that his character was such as to make it unlikely that he would be guilty of the crime charged, and such evidence is proper for the consideration of the jury in determining whether there is reasonable doubt of the guilt of the accused. Edgington *v* U. S., 164 U. S. 361; Com. *v.* Leonard, 140 Mass., 470; Heine *v.* Commonwealth, 91 Penn. St., 145; Remsen *v.* The People, 43 N. Y., 6; People *v.* Grabutt, 17 Mich., 29; Wharton, Crim. Law, Vol. I, §636.

Leading questions.—In commencing the examination of a witness it is a leading of the witness, and objectionable, to read to him the charge and specification or specifications, since he is thus instructed as to the particulars in regard to which he is to testify and which he is expected to substantiate.(*b*) So to read or state to him in substance the charge and ask him "what he knows about it," or in terms to that effect, is loose and objectionable as encouraging irrelevant and hearsay testimony. The witness should simply be asked to state what was said and done on the occasion, etc. A witness should properly also be examined on specific interrogatories and not be called upon to make a general statement in answer to a single general question.(*c*).

Burden of proof.—In criminal cases the burden of establishing guilt rests on the prosecution from the beginning to the end of the trial; but when a *prima facie* case has been made out, the necessity of adducing evidence then devolves on the accused. Agnew *v.* U. S., 165 U. S., 36; Coffin *v.* U. S., 156 U. S., 664.

Opinion.—Upon a trial where the offense is drunkenness or drunken conduct, charged under article 62, or drunkenness on duty, charged under article 38, it is not essential to confine the testimony to a description of the conduct and demeanor of the accused, but it is admissible to ask a witness directly if the accused "was drunk," or for a witness to state that the accused "was drunk," on the occasion or under the circumstances charged. Such a statement is not viewed by the authorities as of the class of expressions of opinion which are properly ruled out on objection unless given by experts, but as a mere statement of a matter of observation palpable to persons in general, and so proper to be given by any witness as a fact in his knowledge.(*d*) Dig. Opin. J. A. G., par. 1289.

A statement to the effect that a person was intoxicated is not admissible in evidence as being an expression of an opinion. Whether a person is drunk or sober is "a fact patent to the observation of all, requiring no scientific knowledge."(*e*) Ibid., par. 1290.

Every question is admissible of a military man, where it is founded on local knowledge, or circumstances which are not within the reach of all the members of the court; but where it is merely a question of military science, to affect the officer who is undergoing his trial, it is obvious that the court is met for no other purpose but to try that, and that they may have before them the facts in evidence on which they are to ground their conclusions. Case of Colonel Quentin, Simmons, 387. In

---

[a] See opinion of the Judge Advocate-General, as adopted by the President, in G. C. M. O. 66, Headquarters of Army, 1879; and compare remarks of reviewing officers, in G. O. 11, Department of California, 1865; G. C. M. O. 31, Department of Dakota, 1869; G. C. M. O. 8, Fourth Military District, 1867.

[b] Compare G. O. 12, Department of the Missouri, 1862; G. O. 36, ibid., 1868; G. O. 29, Department of California, 1865; G. O. 67, Department of the South, 1874.

[c] See G. C. M. O. 14, 24, Department of Dakota, 1877.

[d] People *v.* Eastwood, 14 N. York, 562; Stacy *v.* Portland Pub. Co., 68 Maine, 279; Sydleman *v.* Beckwith, 43 Conn., 12; State *v.* Huxford, 47 Iowa, 16; G. O. 42, Department of the Platte, 1871.

[e] Lawson on Exp. and Opin. Ev., p. 473 et seq.

cases affecting the conduct of the accused, either as to deportment or language, it is not only proper, but often necessary, to require a witness to declare his opinion, because such opinion may be derived from the impression of a combination of circumstances occurring at the time referred to, difficult, if not impossible, fully to impart to the court; but it would be manifestly improper to draw the attention of a witness to facts, either derived from his own testimony or that of another witness, and to ask his opinion as to their accordance with military discipline or usage, because the court, being in possession of the facts, are the only proper judges of their tendency. Simmons, 386.

Experts.—An officer of the Quartermaster Department was admitted by a court-martial to testify as an "expert" in regard to the proper performance of his duties by a chief quartermaster of a military department. *Held* that such testimony was inadmissible and should have been ruled out, the subject being one regulated by law and orders, and the witness being in no proper sense an expert. (*a*) Dig. Opin. J. A. G., 400, par. 36.

Refreshing memory.—Where a witness for the prosecution was permitted by a court-martial to temporarily suspend his testimony and leave the court room for the purpose of refreshing his memory as to certain dates, *held* that such action was irregular and the further testimony of the witness as to such dates inadmissible. By the course pursued the court and accused were prevented from knowing by what means the memory of the witness had been refreshed—whether, for instance, it may not have been refreshed by oral statements of some person or persons. Ibid., par. 1304.

Confessions.—A confession is competent evidence when free and voluntary; otherwise where made through the influence of hope and fear. (*b*) So where an officer admitted to a superior, in writing, the commission of a military offense and promised not to repeat the same, under the well-founded hope and belief that a charge which had been preferred against him therefor would be withdrawn, *held* that, in case he were actually brought to trial upon such charge, the admission thus made would not properly be received in evidence against his objection. Confessions made by private soldiers to officers or noncommissioned officers, though not shown to have been made under the influence of promise or threat, should yet, in view of the military relations of the parties, be received with caution. (*c*) Mere silence on the part of an accused, when questioned as to his supposed offense, is not to be treated as a confession. (*d*) Ibid., par. 1299.

The true test of the admissibility in evidence of the confession of a person on trial for the commission of a crime is that it was made freely, voluntarily, and without compulsion or inducement, and this rule applies to preliminary examinations before a magistrate of persons accused of crime. Wilson *v.* U. S., 162 U. S., 613; Greenleaf on Evidence, §§ 224, 225; Sparf *v.* U. S., 156 U. S., 51; Pierce *v.* U. S., 160 U. S., 355; Bram *v.* U. S., 168 U. S., 532.

Dying declarations.—It is essential to the admissibility of a dying declaration that it was made under a sense of impending death, and this preliminary fact must be proved by the party offering the declaration in evidence. Kelly *v.* U. S., 27 Fed. Rep., 616; Carver *v.* U. S., 164 U. S., 694; People *v.* Abbott, 4 Pac. Rep., 769; People *v.* Simpson, 12 N. W. Rep., 662; Binfield *v.* State, 19 Ibid., 607; People *v.* Hodgdon, 55 Cal., 72; State *v.* Trivas, 32 La. Ann., 108; In re Orpen, 86 Fed. Rep., 760.

PRIVILEGED COMMUNICATIONS.

Official communications between the heads of the Departments of the Government and their subordinate officers are privileged. Were it otherwise it would be impossible for such superiors to administer effectually the public affairs with which they are trusted.

PRESUMPTION AS TO PERFORMANCE OF DUTY.

The law presumes that public officers duly perform their official functions, and this presumption continues till the contrary is shown. Nofire *v.* U. S., 164 U. S., 657.

An officer of the Army has no authority, *virtute officii*, to administer an oath. He

---

[a] The testimony of experts may be obtained by courts-martial in cases in which their services are absolutely necessary and under circumstances in which their appearance would be authorized by the civil courts of the United States having criminal jurisdiction; as their appearance involves an expenditure of public money, however, the authority of the Secretary of War will be required as a condition precedent to their employment.

[b] United States *v.* Pumphreys, 1 Cranch C. C., 74; U. S. *v.* Hunter, ibid., 317; U. S. *v.* Charles, 2 ibid., 76; U. S. *v.* Pocklington, ibid., 293; U. S. *v.* Nott, 1 McLean, 499; U. S. *v.* Cooper, 3 Qu. L. J., 42; Spark and Hansen *v.* U. S., 156 U. S., 51.

[c] See G. C. M. O. 3, War Department, 1878; G. O. 54, Department of Dakota, 1867. And compare Cady *v.* State, 44 Miss., 332.

[d] See Campbell *v.* State, 55 Ala., 80.

THE RULES OF EVIDENCE.

No witnesses excluded on account of color or interest; provided, etc.
July 2, 1864, s. 3, v. 13, p. 351.
Mar. 3, 1865, v. 13, p. 533.
July, 16, 1862, s, 1, v. 12, p. 588.
Sec. 858, R. S.

1815. In the courts of the United States no witness shall be excluded in any action on account of color, or in any civil action because he is a party to or interested in the issue tried: *Provided*, That in actions by or against executors, administrators, or guardians, in which judgment may be rendered for or against them, neither party shall be allowed to testify against the other, as to any transaction with, or statement by, the testator, intestate, or ward, unless called to testify thereto by the opposite party, or required to testify thereto by the court. In all other respects the laws of the State in which the court is held shall be the rules of decision as to the competency of witnesses in the courts of the United States in trials at common law and in equity and admiralty.[1]

Administration of oaths.
July 27, 1892, s. 4, v. 27, p. 278.

1816. Judge-advocates of departments and of courts-martial, and the trial officers of summary courts, are hereby authorized to administer oaths for the purposes of the administration of military justice, and for other purposes of military administration. *Sec. 4, act of July 27, 1892 (27 Stat. L., 278).*

TESTIMONY OF ACCUSED PERSONS.

Accused persons may testify.
Mar. 16, 1878, v. 20, p. 30.

1817. In the trial of all indictments, informations, complaints, and other proceedings against persons charged with the commission of crimes, offenses, and misdemeanors,

---

is, indeed, specially empowered to exercise this function, under certain circumstances, by statute, as by the second, eighty-fourth, and eighty-fifth articles of war; and, further, by section 183, Revised Statutes, in a case where, being an officer of the War Department, he is detailed to investigate frauds, etc. Dig. Opin. J. A. G., par. 1799.

The act of July 27, 1892 (27 Stat. L., 278), in authorizing certain military officers to administer certain oaths, does not, of course, affect the power of administering such oaths of other officials who may have been authorized to administer them before the passage of the act. Such officials may still administer the same, and when doing so should be paid their fees as notaries, commissioners, etc., as before. But, to avoid expense, it is desirable to resort to the officers empowered by the statute, where practicable. Ibid., par. 1801.

[1] U. S. *v.* Murphy, 16 Pet., 203; Smyth *v.* Strader, 4 How., 420; U. S. *v.* Reed, 12 How., 361; Wright *v.* Bales, 2 Bl., 535; Green *v.* U. S., 9 Wall., 655; Lucas *v.* Brooks, 18 Wall., 436; Cornett *v.* Williams, 20 Wall., 226; Packet Company *v.* Clough, 20 Wall., 528; Texas *v.* Chiles, 21 Wall., 488; Railroad Company *v.* Pollard, 22 Wall., 341; Johnson *v.* Owens, 2 Dill., 475; Eslava *v.* Mazange's Administrator, 1 Woods, 623. Act of June 22, 1874, sec. 8 (18 Stat. L., 180).

No witness is to be discredited merely because of his race or color; and, where counsel have asserted that comparatively little credit is to be attached to the evidence of ignorant or semibarbarous Indian witnesses, there is no error in the court's saying that both white men and Indians lie, and that the evidence of both is entitled to the same credit, and such credibility is to be determined by the same rules of law, when this is coupled with a correct statement of the jury's right to consider the intelligence, appearance, apparent candor, opportunities of knowledge, etc., of each witness. Shelp *v.* U. S., 81 Fed. Rep., 94.

in the United States courts, Territorial courts, and courts-martial, and courts of inquiry, in any State or Territory, including the District of Columbia, the person so charged shall, at his own request but not otherwise, be a competent witness. And his failure to make such request shall not create any presumption against him.[1] *Act of March 16, 1878 (20 Stat. L., 30)*.

---

[1] The act of March 16, 1878 (20 Stat. L., 30), having provided that a person charged with the commission of a crime may, at his own request, be a competent witness in the trial, but that "his failure to make such request shall not create any presumption against him," all comment upon such failure must be excluded from the jury. Wilson *v.* U. S., 149 U. S., 60. Such failure to testify is not to create a presumption of guilt. U. S. *v.* Pendergrast, 32 Fed. Rep., 198. When such an accused person elects to testify in his own behalf his testimony may be impeached. U. S. *v.* Brown, 40 Fed. Rep., 437.

An accused person can not testify in his own behalf if incompetent to testify as a witness for any cause. U. S. *v.* Hollis, 43 Fed. Rep., 248.

Pardon restores competency to testify. Logan *v.* U. S., 144 U. S., 263; Boyd *v.* U. S., 142 U. S., 450.

If he waives his privilege as to one act he does so fully in relation to that act; but he does not thereby waive his privilege of refusing to reveal other acts wholly unconnected with the act of which he has spoken, even though they be material to the issue. Low *v.* Mitchell, 18 Me., 372; Tillson *v.* Bowley, 8 Greenl., 163.

Where an accused party waives his constitutional privilege of silence and takes the stand in his own behalf and makes his own statement, the prosecution has a right to cross-examine him upon such statement with the same latitude as would be exercised in the case of an ordinary witness as to the circumstances connecting him with the alleged crime. Fitzpatrick *v.* U. S., 178 U. S., 304.

Where a witness has voluntarily answered as to material criminating facts, it is held with uniformity that he can not then stop short and refuse further explanation, but must disclose fully what he has attempted to relate. This view is adopted by the text-writers, and is very well explained in several of the authorities, where the principle is laid down and enforced. 1 Starkie Evid. (9th Am. ed.); Roscoe's Crim. Ev., 174; 1 Greenl., sec. 451; 2 Phill. Ev., 935; 2 Russ. Cr., 931; Coburn *v.* Odell, 10 Foster, 540; State *v.* K., 4 N. H., 562; State *v.* Foster, 3 Foster, 348; Foster *v.* Pierce, 11 Cush., 437; Brown *v.* Brown, 5 Mass., 320; Amherst *v.* Hollis, 9 N. H., 107; Low *v.* Mitchell, 18 Me., 372; Chamberlain *v.* Willson, 12 Vt., 491; People *v.* Lohmann, 2 Barb. S. C., 216; Norfolk *v.* Gaylord, 28 Conn., 309.

The testimony of an accused party is competent only when presented as authorized by the act of March 16, 1878, viz, when the party himself requests to be admitted to testify. But such testimony is not excepted from the ordinary rules governing the admissibility of evidence, nor from the application of the usual tests of cross-examination, rebuttal, etc. (Dig. Opin. J. A. G., par. 1300.) See, also, MANUAL FOR COURTS-MARTIAL.

It was heretofore an established rule that accused parties could not legally testify as witnesses before military courts. (*a*) But now, by the act of March 16, 1878, it is expressly provided that at trials, not only before the courts of the United States, but before courts-martial and courts of inquiry, "the person charged shall, at his own request, but not otherwise, be a competent witness." It is added: "And his failure to make such request shall not create any presumption against him." But parties testifying under this act have no exceptional status or privileges; they must take the stand and be subject to cross-examination like other witnesses. The submission by the accused of a sworn written statement is not a legitimate exercise of the authority to testify conferred by the statute, and such a statement should not be admitted in evidence by the court. (*b*)

The testimony of the defendant in a criminal case is to be considered and weighed by the jury, taking all the evidence into consideration, and such weight is to be given

---

[a] See G. C. M. O. 3, H. Q. A., 1870, in which is incorporated an opinion of the Judge-Advocate-General on the subject.

[b] See the general orders cited in the note to "Evidence"—a co-conspirator is a competent witness upon the trial of an indictment for conspiracy. U. S. *v.* Sacia, 2 Fed. Rep., 754. The evidence of an accomplice, though uncorroborated, is to be considered for what it is worth. U. S. *v.* Hemming, 18 ibid., 907.

to it as in their judgment it ought to have. Wilson *v.* U. S., 162 U. S., 13; Hicks *v.* U. S., 150 U. S., 442, 452; Allison *v.* U. S., 160 U. S., 203. See, also, Edgington *v.* U. S., 164 U. S., 361.

CRIMINATING QUESTIONS.

The privilege, recognized by the common law, of a witness to refuse to respond to a question the answer to which may criminate him, is a personal one, which the witness may exercise or waive, as he may see fit. It is not for the judge-advocate or accused to object to the question or to check the witness, or the court to exclude the question or direct the witness not to answer. Where, however, he is ignorant of his right, the court may properly advise him of the same. But where a witness declines to answer a question on the ground that it is of such a character that the answer thereto may criminate him, but the court decides that the question is not one of this nature and that it must be answered, the witness can not properly further refuse to respond, and, if he does so, will render himself liable to charges and trial under article 62. Dig. Opin. J. A. G., par. 2474.

It is not sufficient to excuse the witness from testifying that he may, in his own mind, think his answer to the question might, by possibility, lead to a criminal charge against him, or tend to convict him of it if made. The court must be able to perceive that there is reasonable ground to apprehend danger to the witness from his being compelled to answer. U. S. *v.* McCarty, 18 F. R., 87.

Upon a trial of a cadet of the Military Academy, the court (against the objection of the accused) required another cadet, introduced as a witness for the prosecution, to testify as to facts which would tend to criminate him. *Held*, that such action was erroneous, the not answering in such cases being a privilege of the witness only, who (whether or not objection were made) could refuse to testify, and who, if ignorant of his rights, should be instructed therein by the court. Dig. Opin. J. A. G., par. 1308.

Section 860, Revised Statutes.—In the case of Tucker *v.* United States (151 U. S., 164, 168) the Supreme Court of the United States has placed an interpretation upon certain clauses of section 860, Revised Statutes. That section contains the requirement that "no pleading of a party, nor any discovery or evidence obtained from a party or witness by means of a judicial proceeding in this or any foreign country, shall be given in evidence or in any manner used against him or his property or estate, in any court of the United States, in any criminal proceeding, or for the enforcement of any penalty or forfeiture: *Provided*, That this section shall not exempt any party or witness from prosecution and punishment for perjury committed in discovering or testifying as aforesaid." In its decision the court held that "pleadings of parties" are the allegations made by the parties to a civil or criminal case for the purpose of definitely presenting the issue to be tried and determined between them. "Discovery or evidence obtained from a witness by means of a judicial proceeding" includes only facts or papers which the party or witness is compelled by subpœna, interrogatory, or other judicial process to disclose, whether he will or no, and is inapplicable to testimony voluntarily given or to documents voluntarily produced. The clause as to discovery or evidence is conceived in the same spirit as the fifth amendment of the Constitution, declaring that "no person shall be compelled in any criminal case to be a witness against himself;" and as the act of March 16, 1878 (20 Stat. L., 30), enacted that a defendant in any criminal case may be a witness at his own request, but not otherwise, and that his failure to make such request shall not create any presumption against him. Tucker *v.* U. S., 151 U. S., 164, 168; Boyd *v.* U. S., 116 U. S., 616; Wilson *v.* U. S., 149 U. S., 60; Lees *v.* U. S., 150 U. S., 476. No statute which (like section 860, R. S.) leaves the party or witness subject to prosecution, after he answers the criminating question put to him, can have the effect of supplanting the privilege conferred by the Constitution. Counselman *v.* Hitchcock, 142 U. S., 547.

The immediate object of the legislation of February 25, 1868, from which section 860, R. S., is taken, was to protect against certain forfeitures agents of the Confederate States whose testimony in regard to assets of the Confederacy it was desired to obtain abroad. Congressional Globe, 2d sess., 40th Cong., part 2, p. 1334.

A witness can not avoid answering any question by the mere statement that the answer would tend to incriminate him, without regard to whether the statement is reasonable or not. On the contrary, it is for the judge before whom the question arises to decide whether an answer thereto may reasonably have a tendency to criminate the witness, or to furnish proof of an element or link in the chain of evidence necessary to convict him of a crime. Ex parte Irvine, 74 Fed. Rep., 954; ex parte Wagner, ibid. "To entitle a party called as a witness to the privilege of silence, the court must see, from the circumstances of the case and the nature of the evidence which the witness is called upon to give, that there is reasonable ground to apprehend danger to the witness from his being compelled to answer," but that "if the fact of the witness being in danger be once made to appear, great latitude should be allowed

DOCUMENTARY EVIDENCE.

1818. Copies of any books, records, papers, or documents in any of the Executive Departments, authenticated under the seals of such Departments, respectively, shall be admitted in evidence equally with the originals thereof.[1]

Copies of Department records and papers.

Sept. 15, 1789, c. 14, s. 5, v. 1, p. 69; Feb. 22, 1849, c. 61, s. 3, v. 9, p. 347; May 31, 1854, c. 60, s. 2, v. 10, p. 297. **Sec. 882, R. S.**

---

to him in judging for himself of the effect of any particular question, there being no doubt * * * that a question which might appear at first sight a very innocent one might, by affording a link in the chain of evidence, become the means of bringing home an offense of the party answering." Ex parte Reynolds, 20 Chancery Div., 294; Regina *v.* Boyes, 1 Best and S. 329; People *v.* Mather, 4 Wendell, 229; Wharton, Crim. Evid., sec. 469, note 1.

On the trial of a cadet at the Military Academy, a witness declined to answer certain questions upon the ground that the answers might criminate him. Upon being directed by the court to answer the questions to which the above objection had been made, the witness (a cadet) persisted in his refusal. For this charges were preferred and the cadet was brought to trial, found guilty, and sentenced to dismissal. The Secretary of War in reviewing the case remarked that "it was the province of the court to determine, under all the circumstances of the case, whether the accused should answer the questions propounded to him as a witness. He should have submitted to that decision." G. C. M. O., No. 23, War Dept., 1873.

[1] *Public documents.*—The muster rolls on file in the War Department are official records, and copies of the same, duly certified, are primary evidence of the facts originally entered therein and not compiled from other sources, (*a*) subject, of course, to be rebutted by evidence that they are mistaken or incorrect. So, though such rolls are evidence that the soldier was duly enlisted or mustered into the service, and is therefore duly held as a soldier, they may be rebutted in this respect by proof of fraud or illegality in the enlistment or muster (on the part of the representative of the United States or otherwise), properly invalidating the proceeding and entitling the soldier to a discharge. (But that the entries in such rolls are not proof of the commission of an offense, as desertion; for example, see Desertion.) Dig. Opin. J. A. G., par. 1293.

General orders issued from the War Department or Headquarters of the Army may ordinarily be proved by printed official copies in the usual form. The court will, in general, properly take judical notice of the printed order as genuine and correct. A court-martial, however, should not, in general, accept in evidence, if objected to, a printed or written special order (which has not been made public to the Army) without some proof of its genuineness and official character. (*b*) Ibid., par. 1294; see also par. 1312.

The "enlistment paper," the "physical examination paper," and the "outline card" are original writings made by officers in the performance of duty and competent evidence of the facts recited therein. Copies, authenticated under the seal of the War Department, according to section 882, Revised Statutes, are equally admissible with the originals. Ibid., par. 1310.

A descriptive list is but secondary evidence and not admissible to prove the facts recited therein. It is not a record of original entries, made by an officer under a duty imposed upon him by law or the custom of the service, but is simply a compilation of facts taken from other records. Ibid., par. 1314.

The morning report book is an original writing. To properly admit extracts in evidence, the book should be first identified by the proper custodian, and the extracts then not merely read to the court by the witness, but copied, and the copies, properly verified, attached as exhibits to the record of the court. Ibid. par. 1313.

Official books and papers pertaining to the administration of a military post are produced and identified by their proper custodians—papers from the post headquar-

---

[a] But note in this connection the ruling of the supreme court of Massachusetts in the case of Hanson *v.* S. Scituate, 115 Mass., 336, that an official certificate from the Adjutant-General's Office to the effect that certain facts appeared of record in that office, but which did not purport to be a transcript from the record itself, and was therefore simply a personal statement, was not competent evidence of such facts.

It has been held by the United States Supreme Court in a recent case, Evanston *v.* Gunn, 9 Otto, 660, that the record made by a member of the United States Signal Corps of the state of the weather and the direction and velocity of the wind on a certain day was competent evidence of the facts reported, as being in the nature of an official record kept by a public officer in the discharge of a public duty.

[b] See a similar ruling in G. O. 121, Second Military District, 1867.

Copies of records, etc., in office of Solicitor of the Treasury.
Feb. 22, 1849, c. 61, s. 2, v. 9, p. 347.
Sec. 883, R. S.

1819. Copies of any documents, records, books, or papers in the office of the Solicitor of the Treasury, certified by him under the seal of his office, or, when his office is vacant, by the officer acting as Solicitor for the time, shall be evidence equally with the originals.

Transcripts from books, etc., of the Treasury, in suits against delinquents.
Mar. 3, 1797, c. 20, s. 1, v. 1, p, 512; Mar. 3, 1817, c. 45, s. 11, v. 3, p. 367; July 31, 1894, s. 17, v. 28, p. 210.
Sec. 886, R. S.

1820. When suit is brought in any case of delinquency of a revenue officer, or other person accountable for public money, a transcript from the books and proceedings of the Treasury Department, certified by the Secretary or an Assistant Secretary of the Treasury and authenticated under the seal of the Department, or, when the suit involves the accounts of the War or Navy Departments, certified by the Auditors respectively charged with the examination of those accounts, and authenticated under the seal of the Treasury Department, shall be admitted as evidence, and the court trying the cause shall be authorized to grant judgment and award execution accordingly. And all copies of bonds, contracts, or other papers relating to, or connected with, the settlement of any account between the United States and an individual, when certified by such auditor to be true copies of the originals on file, and authenticated under the seal of the Department, may be annexed to such transcripts, and shall have equal validity, and be entitled to the same degree of credit which would be due to the original papers if produced and authenticated in court: *Provided*, That where suit is brought upon a bond or other sealed instrument, and the defendant pleads "non est factum," or makes his motion to the court, verifying such plea or motion by his oath, the court may take the same into consideration, and, if it appears to be necessary for the attainment of justice, may require the production of the original bond, contract, or other paper specified in such affidavit.[1] *Sec. 17, act of July 31, 1894 (28 Stat. L., 210).*

---

ters by the post commander or adjutant; papers belonging to regimental headquarters by the colonel or regimental adjutant; from the Quartermaster's Department by the post quartermaster; from the Subsistence Department by the post commissary, etc. After having been submitted and identified, and used for evidential purposes, they are attached to the record, or, more frequently, restored to their proper custody, the fact of their submission being noted in the record.

Copies of pay accounts (charged to have been duplicated) are admissible in evidence where the accused has by its own act placed the originals beyond the reach of process and fails to produce them in court on proper notice. So where the originals are in the hands of a person who has left the United States, so that they can not be reached, on notice to the accused to produce them, or otherwise. Ibid., par. 1315.

[1] Walton *v.* U. S., 9 Wh., 651; U. S. *v.* Buford, 3 Pet., 12; Smith *v.* U. S., 5 Pet., 292; Cox *v.* U. S., 6 Pet., 172; U. S. *v.* Jones, 8 Pet., 375; Gratiot *v.* U. S., 15 Pet., 336; U. S. *v.* Irving, 1 How., 250; Hoyt *v.* U. S., 10 How., 109; Bruce *v.* U. S., 17 How., 437; U. S. *v.* Edwards, 1 McLean, 467; U. S. *v.* Hilliard et al., 3 McLean, 324; U. S. *v.* Lent, 1 Paine, 417; U. S. *v.* Martin, 2 Paine, 68; U. S. *v.* Van Zandt, 2 Cr. C. C.,

Transcripts from books of the Treasury in indictments for embezzlement of public moneys.
Aug. 6, 1846, c. 90, s. 16, v. 9, p. 63; Mar. 2, 1797, c. 20, s. 1, v. 1, p. 512.
Sec. 887, R. S.

1821. Upon the trial of any indictment against any person for embezzling public moneys, it shall be sufficient evidence, for the purpose of showing a balance against such person, to produce a transcript from the books and proceedings of the Treasury Department, as provided by the preceding section.[1]

Copies of returns in returns office.
June 2, 1862, c. 93, s. 4, v. 12, p. 412.
Sec. 888, R. S.

1822. A copy of any return of a contract returned and filed in the returns office of the Department of the Interior, as provided by law, when certified by the clerk of the said office to be full and complete, and when authenticated by

---

328; U. S. *v.* Griffith, 2 Cr. C. C., 336; U. S. *v.* Lee, 2 Cr. C. C., 462; U. S. *v.* Harrill, 1 McAll., 243; U. S. *v.* Mattison, Gilp, 44; U. S. *v.* Corwin, 1 Bond, 149; U. S. *v.* Gaussen, 19 Wall., 198.

The transcripts from the books and proceedings of the Treasury Department were admissible in evidence as sufficient transcripts within section 88 of the Revised Statutes, and the certificate which certified that the papers annexed thereto were true copies of the originals on file, and of the whole of such originals, was a full compliance with law. Moses *v.* U. S., 166, U. S. 571; U. S. *v.* Pinson, 102 U. S., 548; U. S. *v.* Bell, 111 U. S., 477.

Though certified copies of the books and accounts of the Treasury Department are, by statute, made evidence in favor of the Government in actions against alleged delinquents, they are not conclusive, and, if reply is made thereto, the case is to be decided on all the evidence. U. S. *v.* Young, 44 Fed. Rep., 168; U. S. *v.* Curlevitz, 80 ibid., 852.

[1] Except by the consent of the opposite party, the testimony contained in the record of a previous trial of the same or a similar case can not properly be received in evidence on a trial by court-martial; nor can the record of a board of investigation ordered in the same case be—otherwise—so admitted. In all cases (other than that provided for by the one hundred and twenty-first article of war) testimony given upon a previous hearing, if desired to be introduced in evidence upon a trial, must (unless it be otherwise specially stipulated between the parties) be offered de novo and as original matter. Dig. Opin. J. A. G., par. 1291.

At the trial, in 1894, of an officer charged with a disorder and breach of discipline which involved the killing by him of another officer, there was offered in evidence, on the part of the accused, to exhibit the character and disposition of the officer killed, a copy of a general court-martial order of 1872, setting forth certain charges alleging dishonest and unbecoming conduct upon which the latter officer was then tried and convicted, and the findings of the court thereon. *Held*, that such evidence was wholly inadmissible for the purpose designed. Ibid., par. 1317.

Private documents.—To the admission in evidence of a letter written and signed by the accused (of which the introduction is contested) proof of his handwriting is necessary. Evidence of handwriting by comparison is not admissible at common law except where the standard of comparison is an acknowledged or proved genuine writing already in evidence in the case. A writing not in evidence and simply offered to be used as a standard is not admissible. Ibid., par. 1316.

Strictly speaking, a press copy is secondary to the original document from which it is taken. Such a copy is receivable in evidence on proof of the loss of the original. At the best, however, it continues secondary; hence it has been held that a copy can be produced from a press copy of a lost writing without producing the principal copy. Photographs and other reproductions are secondary. 1 Wharton Ev., sec. 93.

Where the standards of comparison are properly in evidence for another purpose, the handwriting may be compared. Green *v.* Terwilliger, 56 Fed. Rep., 384; Moore *v.* U. S., 91 U. S., 274; Williams *v.* Conger, 125 U. S., 933. A writing specially prepared for the purpose of comparison is inadmissible on a question of genuineness. Hickory *v.* U. S., 151 U. S., 303; King *v.* Donohue, 110 Mass., 155; Williams *v.* State, 61 Alabama, 33, 40, 83.

Handwriting can not be proved by comparison with letters not admitted to be genuine nor belonging to the witness testifying as to the party's handwriting, and produced in court in confirmation or explanation of his testimony. (*a*) U. S. *v.* McMillan, 29 Fed. Rep., 247; xvii Opin. Att. Gen., 310.

---

[a] The jury in a criminal case are not bound by the expert evidence as to handwriting any further than it coincides with their own opinion or than they think it deserves to be credited. U. S. *v.* Molloy, 31 Fed. Rep., 19.

the seal of the Department, shall be evidence in any prosecution against any officer for falsely and corruptly swearing to the affidavit required by law to be made by such officer in making his return of any contract, as required by law, to said returns-office.

Extracts from the Journals of Congress.
Aug. 8, 1846, c. 107, s. 1, v. 9, p. 80.
Sec. 895, R. S.

1823. Extracts from the Journals of the Senate or of the House of Representatives, and of the Executive Journal of the Senate when the injunction of secrecy is removed, certified by the Secretary of the Senate or by the Clerk of the House of Representatives, shall be admitted as evidence in the courts of the United States, and shall have the same force and effect as the originals would have if produced and authenticated in court.

Copies of records, etc., in offices of United States consuls, etc.
Jan. 8, 1869, c. 7, v. 15, p. 266.
Sec. 896, R. S.

1824. Copies of all official documents and papers in the office of any consul, vice-consul, or commercial agent of the United States, and of all official entries in the books or records of any such office, certified under the hand and seal of such officer, shall be admitted in evidence in the courts of the United States.

Authentication of legislative acts and proof of judicial proceedings of States, etc.
May 26, 1790, c. 11, v. 1, p. 122;
Mar. 27, 1804, c. 56, s. 2, v. 2, p. 299.
Sec. 905, R. S.

1825. The acts of the legislature of any State or Territory, or of any country subject to the jurisdiction of the United States, shall be authenticated by having the seals of such State, Territory, or country affixed thereto. The records and judicial proceedings of the courts of any State or Territory, or of any such country, shall be proved or admitted in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, that the said attestation is in due form. And the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are taken.[1]

---

[1] Ferguson *v.* Harwood, 7 Cr., 408; Mills *v.* Duryea, 7 Cr., 481; U. S. *v.* Amedy, 11 Wh., 392; Buckner *v.* Finley, 2 Pet., 592; Owings *v.* Hull, 9 Pet., 627; Urtetiqui *v.* D'Arbel, 9 Pet., 700; McElmoyle *v.* Cohen, 13 Pet., 312; Stacey *v.* Thrasher, 6 How., 44; Bank of Alabama *v.* Dalton, 9 How., 522; D'Arcy *v.* Ketchum, 11 How., 165; Railroad *v.* Howard, 13 How., 307; Booth *v.* Clark, 17 How., 322; Mason *v.* Lawrason, 1 Cr. C. C., 190; Buford *v.* Hickman, Hemp., 232; Craig *v.* Brown, Pet. C. C., 354; Stewart *v.* Gray, Hemp., 94; Gardner *v.* Lindo, 1 Cr. C. C., 78; Trigg *v.* Conway, Hemp., 538; Turner *v.* Waddington, 3 Wash. C. C., 126; Catlin *v.* Underhill, 4 McL., 199; Morgan *v.* Curtenius, 4 McL., 366; Hale *v.* Brotherton, 3 Cr. C. C., 594; Mewster *v.* Spalding, 6 McL., 24; Parrot *v.* Habersham, 1 Cr. C. C., 14; Talcott *v.* Delaware Ins. Com., 2 Wash. C. C., 449; James *v.* Stookey, 1 Wash. C. C., 330; Bennett *v.* Bennett, Dist. Crt., Oregon, 1867.

The courts of the United States take judicial notice of the public statutes of the several States. Merchants Exch. Bank *v.* McGraw, 59 Fed. Rep., 972; Owings *v.*

Proofs of records, etc., kept in offices not pertaining to courts.

Mar. 27, 1804, c. 56, ss. 1, 2, v. 2, pp. 298, 299; Feb. 21, 1871, c. 62, v. 16, p. 419.

Sec. 906, R. S.

1826. All records and exemplifications of books which may be kept in any public office of any State or Territory, or of any country subject to the jurisdiction of the United States, not appertaining to a court, shall be proved or admitted in any court or office in any other State or Territory, or in any such country, by the attestation of the keeper of the said records or books, and the seal of his office annexed, if there be a seal, together with a certificate of the presiding justice of the court of the county, parish, or district in which such office may be kept, or of the governor, or secretary of state, the chancellor or keeper of the great seal of the State, or Territory, or country, that the said attestation is in due form, and by the proper officers. If the said certificate is given by the presiding justice of a court, it shall be further authenticated by the clerk or prothonotary of the said court, who shall certify, under his hand and the seal of his office, that the said presiding justice is duly commissioned and qualified; or, if given by such governor, secretary, chancellor, or keeper of the great seal, it shall be under the great seal of the State, Territory, or country aforesaid in which it is made. And the said records and exemplifications, so authenticated, shall have such faith and credit given to them in every court and office within the United States as they have by law or usage in the courts or offices of the State, Territory, or country, as aforesaid, from which they are taken.

Little & Brown's edition of the statutes to be evidence.

Aug. 8, 1846, c. 100, s. 2, v. 9, p. 76.

Sec. 908, R. S.

1827. The edition of the laws of the United States, published by Little & Brown, shall be competent evidence of the several public and private acts of Congress, and of the several treaties therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.[1]

Hull, 9 Peters, 625; Bank *v.* Francklyn, 120 U. S., 747; Lamar *v.* Micou, 114 U. S., 857; Gormley *v.* Bunyan, 138 U. S., 453.

The testimony of a credible witness, whether a lawyer or a layman, with reasonable means of information, to the effect that a volume containing what purports to be a statute of a foreign country is commonly received in the business and courts of such country as such, is competent and sufficient proof of the existence of such statute. Dundee Mortgage and Investment Co. *v.* Cooper, 26 Fed. Rep., 665.

[1] See, in respect to the Revised Statutes and Statutes at Large of the United States, paragraphs 454–486, *ante*.

DEPOSITIONS.

Depositions. 91 Art of War.

1828. The deposition[1] of witnesses residing beyond the limits of the State, Territory, or district in which any military court may be ordered to sit, if taken on reasonable notice to the opposite party and duly authenticated,[2]

---

[1] *Procedure.*—The party, prosecutor or defendant, desiring the deposition, submits to the court a list of interrogatories to be propounded to the absent witness; the opposite party then prepares and submits a list of cross-interrogatories, a reasonable time being allowed for this purpose; redirect and recross-interrogatories are added, if desired; finally the court, having assented to the interrogatories thus submitted, adds such as in its judgment may be necessary to elucidate the whole of the witness's testimony.

The interrogatories having been accepted by the court, the judge-advocate will prepare duplicate subpœnas requiring the witness to appear in person, at a time and place to be fixed by the officer, military or civil, who is to take the deposition. If the name of this officer is not known, the space for it will be left blank.(*a*)

The judge-advocate will then send the interrogatories and subpœnas to the convening authority, with a request that the deposition be secured.

Depositions may also be taken before the assembling of the court-martial, on interrogatories and cross-interrogatories or reasonable notice, subject to exceptions when read in court.

Judge-advocates of departments and of courts-martial, and the trial officers of summary courts, are authorized to administer oaths and take depesitions. If none of these officers are available, any other army officer may be designated to see that the deposition is properly taken; (*b*) but the oath in such a case must be administered and the deposition authenticated by a civil officer empowered by law to administer oaths for general purposes.

Upon the return of the interrogatories and deposition they will be submitted to the court by the president or judge-advocate. The papers will then be properly marked, appended to the record, and referred to in the proceedings, where all action upon the subject necessary for the information of the reviewing authority will be recorded.

Upon the receipt of the deposition, the judge-advocate will also prepare and sign the ordinary "accounts for a civilian witness," substituting for the usual statement in regard to attendance before the court a statement that he duly attended as a witness at a certain time and place and duly gave his deposition before a certain official named, and then transmit them to the witness with duplicate copies of the order convening the court. The *period of attendance* can be ascertained from the deposition. Manual for Courts-Martial, pp. 37 and 38.

[2] The article, in specifying that the deposition, to be admissible in evidence, shall be "duly authenticated," makes it essential that the same shall be sworn to before—i. e., taken under an oath administered by—an official competent to administer oaths for such purpose. A deposition should now be sworn to before one of the military officers specified in section 4 of the act of July 27, 1892, or if such an officer be not accessible, by a civil official competent to administer oaths in general. An official empowered to administer oaths only for a certain special purpose or purposes can not legally qualify a witness whose deposition is sought to be taken under this article.

A deposition, introduced by either party, which is not "duly authenticated," should not be admitted in evidence by the court, although the other party may not object. A deposition *held* irregular and inadmissible where it failed to show that the officer by whom it was taken was authorized to take it, or that he was qualified to administer the oath to the witness. Dig. Opin. J. A. G., par. 263.

A court-martial has no power to qualify or authorize a commanding officer, or any other officer or person, to take a deposition or administer an oath. Ibid., par. 265.

---

[a] The judge-advocate, in forwarding the interrogatories for a deposition, should transmit with them a subpœna (in duplicate) requiring the witness to appear at a stated place and date before a certain person who is to take the deposition. Particulars not ascertained may be left blank, to be supplied by the officer or person by whom the subpœna is served. When the deposition has been duly taken and returned, the judge-advocate should transmit to the witness (or to some officer, etc., for him) the usual certificate of attendance (accompanied by a copy of the convening order), the duration of the attendance to be ascertained from the deposition. Dig. Opin. J. A. G., par. 1553.

[b] The officer detailed to have a deposition taken, i. e., to see to its being taken, should, before serving the subpœna, complete it, if necessary, by inserting the name and official designation of the notary (or other official having authority to administer the oath) before whom it is to be taken, and the date on which and the place where it is proposed to take it. And when the deposition has been duly taken, he should certify it as so taken, and transmit it in a sealed package to the president of the court. Ibid., par. 269.

may be read in evidence[1] before such court in cases not capital.[2] *Ninety-first Article of War.*

---

[1] This article, in any case within its terms and in which its conditions are complied with, entitles either party to have depositions taken and "read in evidence." The court alone has no power to decide that a deposition, where legal and material, shall not be taken. Dig. Opin. J. A. G., par. 262.

Where the judge-advocate offered in evidence, on the part of the prosecution, a deposition which proved to have been given by a person other than the one to whom the interrogatories were addressed, and the accused objected to its introduction, but the objection was overruled by the court, *held* error; the fact that the intended deponent was but the agent, in the transaction inquired about, of the person who actually furnished the deposition not being sufficient to make such deposition admissible except by consent of parties. (*a*) Ibid., par. 261.

The party at whose instance a deposition has been taken can not be admitted, against the objection of the other party, to introduce only such parts of the deposition as are favorable to him or as he may elect to use; he must offer the deposition in evidence as a whole or not offer it at all. Ibid., par. 258.

If the party at whose instance a deposition has been taken decides not to put it in, it may be read in evidence by the other party. One party can not withhold a deposition (duly taken and admissible under this article) against the consent of the other. Ibid., par. 259.

[2] A deposition can not be read in evidence in a capital case, as in a case of a violation of article 21, or a case of a spy, or one of desertion in time of war; otherwise in a case of desertion in time of peace. Nor is the deposition admissible of a witness who resides in the State, etc., within which the court is held, except by consent. Ibid., par. 256.

A deposition duly taken, under the article, on the part of the prosecution, is not subject to objection by the accused and can not be rejected by the court merely upon the ground that it is declared in the sixth amendment to the Constitution that "in all criminal prosecutions the accused shall enjoy the right * * * to be confronted with the witnesses against him." This constitutional provision has no application to courts-martial; the "criminal prosecutions" referred to are prosecutions in the United States civil courts. Ibid., par. 272.

A deposition is not in general satisfactory evidence for purposes of personal identification by description, and should not be resorted to for the identification of an accused where reliable oral testimony can be obtained. Ibid., par. 266.

The depositions of civilian witnesses, while their taking generally involves less expense than would the personal attendance of the parties, are usually quite sufficient as testimony, except when the purpose of the evidence is to personally identify the accused before the court. Ibid., par. 267.

Civilian witnesses who duly give their depositions under this article are entitled to the same fees and allowances as are witnesses who duly attend the court in person. (See Circular No. 9 (H. Q. A.) 1883.) The voucher, to enable such a witness to obtain his dues, should simply set forth the facts as to his service, substituting, for the usual statement in regard to attendance before the court, a statement that he duly attended as a witness at a certain time and place, and duly gave his deposition before a certain official named. Ibid., par. 270.

Held that duly attending by a civilian witness before a duly authorized official to give a *deposition* to be used in evidence on a military trial was to be regarded as practically equivalent to attending a court-martial, and that the deponent was entitled to be paid the usual allowances (i. e., the same as those of witnesses appearing before the court) out of the regular appropriation for the "compensation of witnesses attending before courts-martial." Ibid., par. 2484.

The so-called depositions ("affidavits or depositions") referred to in paragraph 683, Army Regulations, are entirely distinct from the depositions provided for in article 91, being merely sworn ex parte statements used for the purpose of settling questions of "property accountability." The regulation has no application whatever to depositions proper of the class authorized by this article. (*b*)

---

[a] See Gen. Court-Martial Orders, No. 9, H. Q. Army, 1879.

[b] In the case of Private Harnett, tried for desertion in 1873 and convicted, the proceedings were disapproved in part on account of the admission by the court of an *ex parte* affidavit in support of the case for the prosecution. As the facts which it was proposed to prove by the affidavit had been admitted by the accused, and as no injury resulted to the accused by the error of the court, the findings and sentence were approved. General Court-Martial Orders, No. 33, War Dept., 1873.

THE FINDING.

Order of voting. 95 Art. of War. 1829. Members of a court-martial, in giving their votes, shall begin with the youngest in commission.[1] *Ninety-fifth Article of War.*

---

[1] The term "youngest in commission" as used in this article has been uniformly interpreted to mean "junior in rank," and votes are therefore cast in the inverse order of rank, the member junior in rank casting the first vote.

A tie vote upon any proposition submitted to the court is equivalent to a vote in the negative—a majority vote being necessary to a determination in the affirmative—and the proposition is not approved. Where the vote is a tie upon an objection to testimony, the objection is not sustained. Where it is tied upon a certain proposed finding or form of sentence, the same is not adopted.

THE FINDING.

There should be a separate and independent finding upon each charge and specification, and each separate finding should cover the charge or specification as to which it is made; so that if any charge or specification is deemed by the court to be proved only in part, the finding shall show specifically what is found to be proved and what not. Dig. Opin. J. A. G., par. 1354.

The finding of the court should be governed by the evidence considered in connection with the plea. Where no evidence is introduced, the general rule is that the finding should conform to the plea. Ibid., par. 1352.

The finding on the charge should be supported by the finding on the specification (or specifications), and the two findings should be consistent with each other. A finding of guilty on the charge would be quite inconsistent with a finding of not guilty, or guilty without attaching criminality, on the specification, So a finding of guilty upon a well-pleaded specification, apposite to the charge, followed by a finding of not guilty either of the offense charged or some lesser offense included in it, would be an incongruous verdict. No matter how many specifications there may be, it requires a finding, of guilty or not guilty, on but one specification (apposite to the charge) to support a similar finding upon the charge. Ibid., par. 1353.

It is not competent for a court-martial to find an accused not guilty of the specification, and yet guilty of the charge, where there is but one specification. By finding him not guilty of the specification, they acquit him of all that goes to constitute the offense described in the charge. Where the court believe that the accused is guilty of the charge, but not precisely as laid in the specification, they should find him guilty of the latter, but with such exceptions or substitutions as may be necessary to present the facts as proved on the trial, and then guilty of the charge. Ibid., par. 1356.

In finding guilty upon a specification—to except from such finding the word or words which express the *gravamen* of the act as charged and found, is contradictory and irregular. As—from a finding of guilty on a specification to a charge of fraud under Art. 60, to specially except the word "fraudulent" or "fraudulently," while at the same time finding the accused guilty generally upon the charge. Ibid., par. 1358.

Where, upon the finding, the vote on a charge or specification is *tied*, the accused is, in law, found not guilty thereon; a majority vote being necessary to any conviction. A statement in the *record* to the effect that the vote upon a specification, etc., was a *tie*, and that the accused was therefore acquitted, is of course irregular and improper.[a] Ibid., par. 1364.

Exceptions and substitutions.—It is a peculiarity of the finding at military law that a court-martial, where of opinion that any portion of the allegations in a specification is not proved, is authorized to find the accused guilty of a part of a specification only, *excepting* the remainder; or, in finding him guilty of the whole (or any part), to *substitute* correct words or allegations in the place of such as are shown by the evidence to have been inserted through error. And provided the exceptions or substitutions

---

[a] As to the offense and irregularity involved in stating that a particular finding was unanimous, see the 84th Article of War; see also the title "*Oaths*," *supra*.

As the affirmative of any proposition can be adopted by a court-martial only by a majority vote, and as all tie votes on the findings inure to the benefit of the accused, a finding of acquittal thereon should have been recorded. G. C. M. O. 17, War Dept., 1871. See also G. C. M. O., No. 1, War Dept., 1872.

1830. Whenever a court-martial shall sit in closed session the judge-advocate shall withdraw, and when his legal advice or assistance in referring to the recorded evidence

Closed sessions. July 27, 1892, s. 2, v. 27, p. 278.

---

leave the specification still appropriate to the charge and legally sufficient thereunder, the court may then properly find the accused guilty of the charge in the usual manner. Dig. Opin. J. A. G., par. 1355.

Familiar instances of the exercise of the authority to *except* and *substitute* in a finding of guilty occur in cases where, in the specification, the name or rank of the accused, or some other person, is erroneously designated, or there is an erroneous averment of time or place, or a mistaken date, or an incorrect statement as to amount, quantity, quality, or other particular, of funds or other property, etc. Ibid., par. 1357.

In a case where a court-martial made such exceptions and substitutions in its finding upon the specification to a charge of "Forgery to the prejudice of good order and military discipline" as to negative the material allegation of false writing and leave no legal basis for the finding arrived at of guilty of the charge—*advised* that the findings be disapproved as incongruous and insufficient to sustain the sentence. Ibid., par. 1366.

Finding of a minor included offense.—The practice of making exceptions and substitutions in the findings is well illustrated by the finding—authorized at military law when called for by the evidence(*a*)—of a *lesser kindred offense included as a constituent element in the specific offense charged.*(*b*) Of this form of verdict the most familiar instance is the finding of guilty of absence without leave under a charge of desertion. A full acquittal of desertion includes, of course, an absence without leave involved in it; but where the evidence falls short of establishing a desertion, but shows an unauthorized absenting of himself by the accused, he may and should be convicted of absence without leave as his actual offence. In arriving at this conclusion, the findings on the specification and charge should be consistent, and the finding on the former should be such as to support the latter. In their finding of guilty upon the specification, the court should in terms *except* from its application such words of the specification as allege or describe desertion exclusively, and substitute words describing the lesser offense; the words "did desert," for example, being excepted, and the words "did absent himself without authority" being substituted. The finding on the charge should regularly be "not guilty, but guilty of absence without leave."(*c*) Ibid., par. 1359.

But the authority to find guilty of a minor included offense, or otherwise to make exceptions or substitutions in the finding, can not justify the conviction of the accused of an offense entirely separate and distinct in its nature from that charged. Thus *held* that it was not a finding of a lesser included offense to find the accused guilty merely of absence without leave under a charge of a violation of the forty-second Article of War in abandoning his post before the enemy. And so *held* of a finding, under a charge of a violation of article 39, of not guilty but guilty of a violation of article 40. So, where a soldier charged with "conduct to the prejudice of good order and military discipline," in concealing the fact that a fellow soldier had appropriated to his own use certain public property, was found not guilty of the specification as laid, but guilty of "having stolen the property himself," and guilty of the charge, and was accordingly sentenced to imprisonment—*held* that such a finding was manifestly unauthorized. Having been found not guilty of the offense set forth in the specification, and which alone he was called upon to answer, he should have been acquitted on both charge and specification; the offense of which he was found guilty was not alleged against him, and not being *included* in that charged, could not properly form the subject of a finding. The remission of his sentence therefore *recommended.* Ibid., par. 1360.

It is a further peculiarity of the finding at military law that, where an accused is charged with "conduct unbecoming an officer and a gentleman," or with any specific offense made punishable by the Articles of War, and the court is of opinion that while the material allegations in the specification or specifications are substantially made out, they do not fully sustain the charge as laid, but do clearly establish the commission of a neglect of military duty or a disorder in breach of military discipline, as involved in the acts alleged, the accused may properly be found guilty of the specification (or specifications), and not guilty of the charge, but guilty of "*conduct to the prejudice of good order and military discipline.*" Such a form of finding is

---

[a] See XIII Opins. At. Gen., 460.

[b] Compare Reynolds *v.* People, 83 Ills., 479, and note the similar authority given in criminal cases in the United States courts by sec. 1035, Rev. Stats.

[c] A simple finding, however, of guilty of absence without leave, though an irregular form, would amount in law to an acquittal of the higher offense charged. Compare Morehead *v.* State, 34 Ohio St., 212

is required it shall be obtained in open court.[1] *Section 2, act of July 27, 1892 (27 Stat. L., 278).*

SENTENCES.

Par.
1831. Sentences affecting general officers.
1832. Death sentences.
1833. Flogging, branding, marking, tattooing, etc.
1834. Dismissal of officers.
1835. The same, cowardice or fraud.
1836. Suspension of officers.
1837. Confinement in penitentiary.

Sentences respecting general officers. **108 Art. War.**

1831. No sentence of a court-martial, either in time of peace or in time of war, respecting a general officer, shall be carried into execution, until it shall have been confirmed by the President.[2] *One hundred and eighth Article of War.*

---

now common in our practice (especially where the charge is laid under article 61), and its legality is no longer questioned. Dig. Opin. J. A. G., par. 1361.

The authority thus to find, however, has not been extended beyond the case indicated in the last paragraph; the *reverse*, for example, of this form of finding has never been sanctioned. A finding of guilty of a certain *specific* offense, under a charge of another specific offense, or under a charge of "conduct unbecoming an officer and a gentleman," or of "conduct to the prejudice of good order and military discipline," would be wholly irregular and invalid. Thus a finding of guilty of disobedience of orders (or of a violation of article 21), under a charge of mutiny in violation of article 22, or a finding of drunkenness on duty (or of a violation of article 38), under a charge for a drunken disorder laid under article 62 or 61, would be not only unauthorized, but now almost unprecedented, and, if such a finding were made, it could scarcely fail to be formally disapproved. And so of a finding of "conduct unbecoming an officer and a gentleman" under a charge of "conduct to the prejudice of good order and military discipline." Ibid., par. 1362.

The general finding of "conduct to the prejudice," etc., in the cases above indicated is sanctioned in order to prevent a failure of justice, not for the purpose of relieving the accused of any of his due share of culpability. It should not therefore be resorted to where the specific offense charged is substantially made out by the testimony. Thus in a case where the facts set forth in the specification to a charge of "conduct unbecoming an officer and a gentleman," and clearly established by the evidence, fixed unmistakably upon the accused dishonorable behavior compromising him officially and socially—*held* that a finding by the court that he was guilty only of "conduct to the prejudice of good order and military discipline" should not be accepted, but that the court should be reconvened for the purpose of inducing, if practicable, a finding in accordance with the facts and with justice. Ibid., par. 1363.

It is an important part of the judgment of the court, in a case where the evidence is conflicting, to determine the measure of the credibility to be attached to the several witnesses. In its finding, therefore, the court may, in connection with the testimony, properly take into consideration the appearance and deportment of the witnesses on the stand and their manner of testifying, especially when under cross-examination. Ibid., par. 1365.

[1] All deliberation of the court takes place with closed doors. At other times, except as to those persons who have been summoned as witnesses, a court-martial is open to the public, military or otherwise, subject to the capacity of the room or tent in which it is held, and the convenience of the court and parties before it. The president orders the clearing of the court for deliberation, or any incidental discussion when he may deem it expedient, or at the instance of a member; where it is more convenient to do so the court withdraws for deliberation. In every case, however, in which the court is cleared for any purpose whatever, the judge-advocate, under the operation of the above statute, together with the accused and his counsel, the interpreters, reporters, witnesses, and spectators withdraw, leaving in the court only the officers designated to compose it. Simmons, 454.

[2] *Procedure.*—The best approved practice of military courts in determining upon their sentences is believed to be as follows: For each member to write a sentence and deposit it with the judge-advocate; and, no sentence having been adopted by a majority of votes, for the court, after all the sentences have been read to it, to proceed to vote upon them in the order of their severity, beginning with the least severe, until some one of those proposed is agreed upon by a majority of votes. It is not *essential*, indeed,

1832. No person shall be sentenced to suffer death, except by the concurrence of two-thirds of the members of a general court-martial, and in the cases herein expressly mentioned.[1] *Ninety-sixth Article of War.*

Death sentences.
96 Art. of War.

---

that this form of voting should be pursued—it being open to the court, in its discretion, to adopt a different one. Dig. Opin. J. A. G., par. 2308.

That, upon a conviction by a majority vote of the court, all the members of the court, those who voted for an acquittal equally with those who voted for conviction, must vote for some sentence—though formerly doubted—has long been established as a principle in our military law. While a member who voted for an acquittal can not of course be *compelled* to vote a punishment, yet his persistent refusal to do so would be a neglect of duty, rendering him amenable to a charge under article 62. Ibid., par. 2309.

A sentence, to be valid, must of course rest upon an approved finding of guilty of an offence for which the accused has been tried. Thus a duly approved finding of guilty on *one* of several charges, a conviction upon which requires or authorizes the sentence adjudged, will give validity and effect to such sentence, although the similar findings on all the other charges are disapproved as not warranted by the testimony. But a finding of guilty of a *specification* to a charge but not guilty of the charge itself will not support a sentence, unless, indeed, there is added a conviction of some lesser offence included in that charged. Ibid., par. 2312.

A punishment, adjudged upon conviction of the accused on several charges, is valid and operative provided it is a punishment legally imposable on conviction of any *one* of the charges of which the conviction is duly approved by the reviewing authority. Ibid., par. 2311.

The word "month" or "months," employed in a sentence, is to be construed as meaning *calendar* month or months; the same significance being given to the term as is now commonly given to it in the construction of American *statutes* in which the word is employed. The old doctrine that "month," in a sentence of court-martial, meant *lunar* month, has long since ceased to be accepted in our military law. Ibid., par. 2314.

A legal sentence of court-martial, when once duly approved and *executed*, can not be reached by a pardon, nor revoked, recalled, modified or replaced by a milder punishment, or other proceeding, either by the Executive or by Congress. (*a*) The only remedy for a party who has suffered injustice from such a sentence is either a new appointment to the Army by the President or some legislation within the province of Congress relieving or indemnifying him for and on account thereof. Ibid., par. 2323.

[1] A sentence of death imposed by a court-martial, upon a conviction of several distinct offences, will be authorized and legal if any *one* of such offences is made capitally punishable by the Articles of War, although the other offenses may not be so punishable. Ibid., par. 285.

A court-martial, in imposing a death sentence, should not designate a time or place for its execution, such a designation not being within its province but pertaining to that of the reviewing authority. If it does so designate, this part of the sentence may be disregarded and a different time or place fixed by the commanding general. Ibid., par. 286.

Where a death sentence imposed by a court-martial has been directed by the proper authority to be executed on a particular day, and this day, owing to some exigency of the service, has gone by without the sentence being executed, it is competent for the same authority, or his proper superior, to name another day for the purpose, the time of its execution being an immaterial element of this punishment. (*b*) Ibid., par. 287.

Article VIII of the amendments to the Constitution prohibits the infliction of

---

[a] The well-established principles—that mere irregularities in the proceedings will not affect the validity of an *executed* sentence, and that a legal sentence once duly confirmed and executed is "no longer subject to review by the President"—so pointedly set forth (in 1843) in IV Opins., 274, are further illustrated in XIV Id., 290, 432.

[b] It was held by the Supreme Court, in Coleman *v.* Tennessee (7 Otto, 519–520), that a soldier who had been convicted of murder and sentenced to death by a general court-martial in May, 1865, but the execution of whose sentence had been meanwhile deferred by reason of his escape and the pendency of civil proceedings in his case, might at the date of the ruling "be delivered up to the military authorities of the United States to be dealt with as required by law."

More recently it has been held in this case by the Attorney-General that the death sentence might legally be executed notwithstanding the fact that the soldier had meanwhile been discharged from the service, such discharge, while formally separating the party from the Army, being viewed as not affecting his legal *status* as a military convict. But in view of all the circumstances of the case it was recommended that the sentence be commuted to imprisonment for life or a term of years. XVI Opin. Att. Gen., 349.

Prohibited punishments.
98 Art. of War.

1833. No person in the military service shall be punished by flogging, or by branding, marking, or tattooing on the body. *Ninety-eighth Article of War.*

"cruel and unusual punishments." While this provision does not necessarily govern courts-martial, inasmuch as they are not a part of the judiciary of the United States, (*a*) it should be observed as a general rule. Thus, where for an offence not peculiarly aggravated a court-martial imposed upon a soldier, in connection with a forfeiture of pay for six months, the further penalty of carrying a loaded knapsack weighing twenty-four pounds every alternate hour from sunrise to sunset of each day (Sundays excepted) during that period, *held* that this punishment was excessive and exceptional, and, the same having been suffered by the soldier for three months, *recommended* that its unexpired term be at once remitted. Dig. Opin. J. A. G., par. 2313, note 1.

The punishment of ball and chain, though sanctioned by the usage of the service, should, in the opinion of the Judge-Advocate-General, be imposed only in extreme cases. Its remission has, in general, been recommended by him except in cases of old offenders, or aggravated crime, where deemed serviceable as a means of obviating violence or preventing escape. This penalty, like those of shaving the head and drumming out of the service, has become rare in our Army since the further corporal punishment of branding or marking has been expressly prohibited by statute. (*b*) Ibid., par. 2314.

Military duty is honorable, and to impose it in any form as a punishment must tend to degrade it, to the prejudice of the best interests of the service. Thus, *advised* that a sentence "to do extra duty" for a certain term would properly be disapproved. So *advised* of sentences imposing "guard duty" for certain periods. So *advised* of a sentence imposing, in connection with a term of confinement in charge of the guard, the penalty of "sounding all the bugle calls at the post during the same period." So *advised* in regard to a sentence which required a deserter—not for the purpose of making good the time lost by his desertion, but as a punishment—to serve for an additional year after the expiration of his term of enlistment. (*c*) Ibid., par. 2315.

The existing law fixing the term of a soldier's enlistment at three years, a court-martial can have no power to prolong it by adding to such term an additional period by way of punishment. Thus a sentence—"to make good, at the expiration of his term, a period of fifty-seven days during which his services were lost to the United States by being held in hospital on account of pistol wound received by him while in the commission of a disorder in violation of the 62d Article of War"—*held* unauthorized and properly disapproved. Ibid., par. 2316.

A sentence can not legally extend the time of the service of a soldier beyond the term for which he originally contracted. Ibid.

Discretionary sentences.—In a case where its sentence is discretionary, a court-martial may impose any punishment that is sanctioned by usage (the "custom of the service" referred to in Art. 84), although (in cases of soldiers) the same may not be included in the list of the more usual punishments contained in the manual for courts-martial. Ibid., par. 2313. Such discretion on the part of the court-martial, however, is regulated in its exercise in respect to enlisted men by the orders of the President imposing limits of punishment which will presently be described.

Under the authority conferred by the act of September 27, 1890, three orders have been issued by the President prescribing a system of maximum punishments to be imposed by the several military tribunals upon enlisted men who have been convicted of one or more of the offenses therein set forth. The first of these orders was

---

[a] That the provisions of the Vth, VIth, and VIIIth amendments to the Constitution, relating to criminal proceedings, apply only to the courts, etc., of the United States. See Barron *v.* Mayor of Baltimore, 7 Peters, 243; Ex parte Watkins, Id. 573; Twitchell *v.* The Commonwealth, 7 Wallace, 326; Edwards *v.* Elliott, 21 Id., 557; Walker *v.* Sauvinet, 2 Otto, 90; Pearson *v.* Yewdall, 5 Id. 294; 1 Bish. Cr. L., § 725.

[b] The exercise of the power conferred upon the President by the act of September 27, 1890 (26 Stat. L., 491), to prescribe limits for discretionary punishments has operated to introduce uniformity among the sentences imposed upon enlisted men by the various military tribunals. See, also, as in accord with the spirit of this paragraph, G. C. M. O. No. 329, A. G. O. 1864; G. O. 17, Department of the Missouri, 1861; G. O. 56, A. of P., 1862; G. O. No. 3, Department of the Northwest, 1864; G. O. No. 49, Middle Department, 1864.

[c] The duty of a sentinel is important and honorable, and, by Army Regulations, all persons are required to observe respect toward sentinels. It is deemed improper to impose as a punishment anything presenting the semblance of the performance of the duty of a sentinel. G. C. M. O. 7, War Dept., 1871.

A sentence imposing solitary confinement in a dark cell was imposed by a general court-martial in 1873; so much of the sentence as required the confinement to be served in a dark cell was remitted by the Secretary of War as amenable to the objection of being "cruel and unusual punishment." G. C. M. O. 24, War Dept., 1873.

Dismissal of commissioned officers. 99 Art. War.

1834. No officer shall be discharged or dismissed from the service, except by order of the President, or by sentence of a general court-martial; and in time of peace no officer shall be dismissed, except in pursuance of the sentence of a court-martial, or in mitigation thereof.[1] *Ninety-ninth Article of War.*

---

promulgated in General Orders, No. 21, A. G. O., of 1891; a second order on the same subject was embodied in General Orders, No. 16, of 1895; the third, which is now in force, was embodied in Executive Orders of March 30, 1898, and was promulgated to the Army in General Orders, No. 16, A. G. O., of 1898. Under the strict terms of the statute the orders of the President fixing a schedule of maximum punishments are operative only in time of peace, and, although courts-martial may, at their discretion, apply their provisions in determining sentences imposed by them in time of war, they are under no legal obligation to do so. For the maximum-punishment order now in force, see page 1067, *post*.

Upon the conviction of an officer or soldier under a charge of a crime, such as manslaughter, robbery, larceny, etc., *to the prejudice of good order and military discipline*, while the statute of the United States or State, providing for its punishment as a civil offence, may well be referred to as indicating the nature and extent of the punishment deemed proper for the same by the civil authorities, the punishment to be imposed by the court-martial should, nevertheless, be measured less by the criminality of the act as a civil offence than by its gravity as a breach of military discipline. Thus, where a soldier, having been brought to trial before a civil court for the homicide of another soldier, and inadequately sentenced, was subsequently tried by a general court-martial for the military offence involved in his act, *held* that the court would only properly impose upon him a penalty proportioned to the injury done to the good order and discipline of the service, and should not, by an excessive punishment, attempt to compensate for the over-lenient judgment of the civil court. Dig. Opin. J. A. G., par. 2318.

A sentence of confinement until a certain sum of public money, proved to have been embezzled by an accused, is paid, is proper for the reason "that without this provision in a sentence there is no means, in the case of an officer not bonded, of enforcing such restitution beyond the extent of his pay." G. C. M. O. 27, War Dept., 1872.

Mandatory punishment.—Where the Article of War under which the charge is laid is mandatory as to the punishment (as in the cases of Arts. 6, 8, 13, 14, 15, 18, 26, 37, 38, 50, 57, 59, 61, 65), and the sentence imposes, in connection with the mandatory punishment, a further penalty or penalties, this addition to the sentence does not affect its legality so far as relates to the mandatory punishment; as to this it is valid and operative, though as to the rest it is a nullity. Dig. Opin. J. A. G., par. 2310.

Where a sentence in excess of the legal limit is divisible, such part as is legitimate may be approved and executed. Thus where a sentence of an inferior court imposes a fine or forfeiture beyond the limit of the 83d Article of War, the sentence may be approved and executed as to so much as is within the limit. Ibid., par. 2324.

Cumulative punishment.—Where, while an officer or soldier is undergoing a certain sentence, he is again brought to trial for a military offence, and a further sentence is adjudged him, imposing a punishment of the same species as that which is being executed, it is the general rule of the service that the second sentence is to be regarded as *cumulative* upon the first, and that its execution is to commence when the execution of the first is completed. This, whether or not the court, in the second sentence, may have in terms specified that the second punishment should be additional to the first; such second punishment being made cumulative by operation of law irrespective of any direction (and such direction is, in fact, rarely expressed) in the sentence. Ibid., par. 2317.

[1] Courts-martial are empowered *and required* to adjudge dismissal upon officers of the Army by the 3d, 6th, 8th, 13th, 14th, 15th, 18th, 26th, 27th, 28th, 38th, 50th, 54th, 59th, 61st and 65th Articles of War, upon conviction of the specific offences therein described. In Articles 8 and 50 the punishment of dismissal is referred to as "cashiering"—a term which has almost passed out of use in our service, and when employed means no more than dismissal. Ibid., par. 1196.

A legal sentence of dismissal of an officer when finally confirmed by the competent authority, according to the 106th or 109th Article of War, takes effect upon the officer on the day on which the confirmation is officially communicated to him, either by the promulgation of the order of confirmation at his station or other form of

Dismissal for cowardice or fraud; publication of sentence. 100 Art. War.

1835. When an officer is dismissed from the service for cowardice or fraud, the sentence shall further direct that the crime, punishment, name, and place of abode of the delinquent shall be published in the newspapers in and about the camp, and in the State from which the offender came, or where he usually resides; and after such publication it shall be scandalous for an officer to associate with him.[1] *One hundredth Article of War.*

Suspension. 101 Art. War

1836. When a court-martial suspends an officer from command it may also suspend his pay and emoluments for the same time, according to the nature of his offense.[2] *One hundred and first Article of War.*

---

official notice. Thus the date of the actual confirmation is not necessarily—is not probably in the majority of cases—the date on which the dismissal goes into effect. The declaration is indeed sometimes added in the order of confirmation, that the party "ceases thereupon to be an officer of the Army;" but this declaration is immaterial and surplusage. It not unfrequently happens—especially in time of war, and particularly when the officer has, since his trial, been taken prisoner by the enemy—that a considerable period may elapse before the officer is officially informed of the confirmation of the sentence and thus becomes, in law and fact, dismissed from the service. Dig. Opin. J. A. G. par. 1197.

A sentence of dismissal does not attach any legal *disability* to the person dismissed. He is not—as is indeed indicated by sec. 1228, Revised Statutes, above cited—disqualified to be newly appointed to the Army, nor is he disqualified to be enlisted as a soldier, or to hold civil office under the United States. Ibid., par. 1201.

[1] Though the injunction of the article, as to the *direction* to be added in the sentence, should of course regularly be complied with, a failure so to comply will not affect the validity of the punishment of dismissal adjudged by the sentence. (*a*) The declaration of the article, that after the publication "it shall be scandalous for an officer to associate with" the dismissed officer, though it has in a few cases (*b*) been incorporated in the sentence, is not intended to be, and should not be, so expressed by the court. Dig. Opin. J. A. G., par. 302.

The punishment of suspension, as imposed by sentence, is usually in the form of a suspension from *rank*, or from *command*, for a stated term, sometimes accompanied by a suspension from *pay* for the same period. Suspension from rank *includes* suspension from command. Ibid., par. 2408.

In rare cases the form, "to be suspended from the service," has been employed in the sentence. Such a suspension is equivalent in substance to a suspension from rank.

A still rarer form, "to be suspended from duty," has been deemed to be practically equivalent to a sentence of suspension from command. (*c*) These forms are now rarely resorted to. Ibid., 732, par. 12.

A sentence, "to be suspended from the Military Academy," in a case of a cadet, practically severs him from the military service as a cadet during the term of the suspension. It is usually added in such a sentence that, at the end of such term, the party is to join the next lower class. Ibid., par. 2416.

Like dismissal, suspension takes effect upon and from notice of the approval of the sentence officially communicated to the officer, either by the promulgation of the same at his station, or—where he is absent therefrom by authority—by the delivery to him of a copy of the order of approval or other form of official personal notification of the fact of the approval. Ibid., par. 2423.

[2] A suspension from rank does not affect the right of the officer to his *office*. He retains the same as before, and, as an officer, remains subject as before to military control as well as to the jurisdiction of a court-martial for any military offence committed pending the term of suspension. (*d*) Ibid., par. 2418.

---

[a] Note the action taken in the case published in G. C. M. O. 27, War Dept., 1872.

[b] As in cases published in G. O. (A. and I. G. O.) of May 13, 1820; do. 168, Dept. of the Missouri, 1865.

[c] Suspension *from duty*, as distinguished from suspension from rank, is a recognized punishment in the *naval* service. Navy Regulations, Art. 32, sec. 2; Harwood, 134–5. The form, "to be suspended from rank and duty," occurs in G. C. M. O. 19, of 1885.

[d] See v. Opin. Att. Gen., 740; vi. ibid., 715.

Confinement in a penitentiary. 97 Art. War.

1837. No person in the military service shall, under the sentence of a court-martial, be punished by confinement in a penitentiary unless the offense of which he may be convicted would, by some statute of the United States, or by some statute of the State, Territory, or District in which such offense may be committed, or by the common law, as the same exists in such State, Territory, or District, subject such convict to such punishment.[1] *Ninety-seventh Article of War.*

---

[1] This article by necessary implication prohibits the imposition of confinement in a penitentiary as a punishment for offenses of a purely or exclusively military character, such, for example, as desertion, absence without leave, or disobedience of orders. (*a*) Dig. Opin. J. A. G., par. 288. A sentence of penitentiary confinement in a case of a purely military offense is wholly unauthorized and should be disapproved. Effect can not be given to such a sentence by commuting it to confinement in a military prison or to some other punishment which would be legal for such offense. Nor in case of such an offense can a severer penalty, as death, be commuted to confinement in a penitentiary. Ibid, par. 289. Nor can penitentiary confinement be legalized as a punishment for purely military offenses by designating a penitentiary as a "military prison" and ordering the confinement there of soldiers sentenced to imprisonment on conviction of such offenses. Ibid, par. 290.

The term "penitentiary," as employed in this article, has reference to civil prisons only, as the penitentiary of the United States or District of Columbia at Washington, the public prisons or penitentiaries of the different States, and the penitentiaries "erected by the United States" (see section 1892, Revised Statutes) in most of the Territories. The military prison at Leavenworth is not a penitentiary in the sense of the article. The term State or State's prison in a sentence is equivalent to penitentiary. Ibid, par. 292.

Where a soldier is sentenced to be confined in a penitentiary the proper reviewing authority may legally designate for the execution of the punishment any State or Territorial penitentiary within his command. Where there is no such penitentiary available for the purpose, or desirable to be resorted to, he will properly submit the case to the Secretary of War for the designation of a proper penitentiary.

A military prisoner duly sentenced or committed to a penitentiary becomes subject to the government and rules of the institution. Ibid., par. 293.

An offence charged as "Conduct to the prejudice of good order and military discipline," which, however, is *in fact* a larceny, (*b*) embezzlement, violent crime, or other offence made punishable with penitentiary confinement by the law of the State, etc., may legally be visited with this punishment. Ibid., par. 291.

Where the act is charged as a crime under article 62, and charge and specification taken together show an offence punishable with confinement in a penitentiary by the law of the *locus* of the crime, the sentence may legally adjudge such a punishment. So *held*—in a case where charge and specification together made out an allegation of perjury under section 5392, Revised Statutes. (*c*) Ibid., par. 297.

LIMITS OF PUNISHMENT.

President to prescribe limit of punishment. Sept. 27, 1890, v. 26, p. 491.

1838. That whenever by any of the Articles of War for the government of the Army the punishment on conviction of any military offense is left to the discretion of the

---

a See General Orders, No. 4, War Dept., 1867; G. O. 21, Dept. of the Platte, 1866; 21 ibid., 1871; G. O. 44, Eighth A. C., 1862; G. C. M. O., Nos. 34, 35, 43, 46, 72, and 73, Dept. of the Missouri, 1870.

b In a case of *larceny* the court should inform itself as to whether the *value* of the property stolen be not too small to permit of penitentiary confinement for the offence under the local law. See G. O. 44, Eighth Army Corps, 1862; G. C. M. O. 63, Dept. of the Platte, 1872.

c *Held* that penitentiary confinement could not legally be adjudged upon a conviction of a violation of the 21st article, alleged in the specification to have consisted in the lifting up of a weapon (a pistol) against a commanding officer and discharging it at him with intent to kill. By charging the offence under this article the Government elected to treat it as a purely military offence subject only to a military punishment. So, upon a conviction of joining in a mutiny, in violation of article 22, *held* that a sentence of confinement in a penitentiary would not be legal although the mutiny involved a homicide, set forth in the specification as an incidental aggravating circumstance. To have warranted such a punishment in either of these cases the Government should have treated the act as a "crime," and charged and brought it to trial as such, under article 62. Dig. Opin. J. A. G., par. 296.

court-martial the punishment therefor shall not, in time of peace, be in excess of a limit which the President may prescribe.[1] *Act of September 27, 1890 (26 Stat. L., 491).*

---

[1] Under the authority conferred by this statute, four Executive orders have been issued prescribing limits of punishment for offenses to which specific penalties are not attached in the Articles of War. See General Order, No. 42, A. G. O. of 1901, which contains the Executive order of March 12, 1901, which is now in force. For a copy of the Executive order of March 12, 1901, see APPENDIX, page 1067, and MANUAL FOR COURTS-MARTIAL (edition of March 16, 1901), pp. 48–57.

Disciplinary punishments.—The several Articles of War, and other statutes of similar character, conferring jurisdiction upon certain military tribunals for the trial and punishment of military offenses, operate to deprive commanding and other officers of the power to inflict punishment upon officers and enlisted men under their command save in accordance with the methods prescribed in the statutes above indicated.

A military punishment can legally be imposed only by sentence of court-martial after a regular trial and conviction. Such a punishment can not be imposed by a mere *order.*

We have in our military law no system of disciplinary punishments. Except in a few cases, unimportant in themselves or of rare occurrence in practice (see arts. 25, 52, 53, and 54), our code recognizes no punishments other than such as may be adjudged upon trial and conviction by a military court. In the General Orders punishments inflicted merely at the will of military commanders have been repeatedly condemned as illegal and forbidden in practice. [See G. O. 81 (A. G. O.), 1822; do. 53, Hdqrs. of Army, 1842; do. 2, 4, War Dept., 1843; do. 39, Hdqrs. of Army, 1845; do. 645, War Dept., 1865; do. 49, Northern Dept., 1864; do. 22, Dept. of the Platte, 1867; do. 44, id., 1871; do. 63, Dept. of Dakota, 1868; do. 106, id., 1871; do. 40, Dept. of the East, 1868; G. C. M. O. 112, id., 1870; do. 90, id., 1871; G. O. 14, Dept. of the South, 1869; do. 1, 23, 93, id., 1873; do. 9, Mil. Div. of the Atlantic, 1869; do. 31, id., 1873; do. 23, Dept. of the Lakes, 1870; G. C. M. O. 50, Dept. of the Missouri, 1871.] Officers who have resorted to such punishments have been repeatedly brought to trial and sentenced. [See G. O. (A. and I. G. O.), of June 30, 1821; do. 8 (A. G. O.), 1826; do. 28, id., 1829; do. 64, id., 1832; do. 2, 6, 68, War Dept., 1843; do. 39, Hdqrs. of Army, 1845; do. 53, Dept. of Va. and No. Ca., 1864; do. 22, Dept. of the Platte, 1867; do. 9, Mil. Div. of the Atlantic, 1869; do. 14, Dept. of South, 1869; G. C. M. O. 50, Dept. of the Missouri, 1871.] And enlisted men, tried and sentenced for insubordinate conduct, where such conduct has been induced or aggravated by illegal corporal punishments inflicted upon them by superiors, have commonly had their sentences remitted or mitigated, or altogether disapproved. [See G. O. 49, 76, Northern Dept., 1864; do. 40, Dept. of the East, 1868; G. C. M. O. 90, id., 1871; G. O. 63, Dept. of Dakota, 1868; do. 76, id., 1871; G. C. M. O. 45, id., 1880; do. 93, Dept. of the South, 1873.] In proper cases, of course, as where violence is employed, escape attempted, etc., by soldiers who are mutinous or disorderly, or in arrest under charges, force may be used against them according to the necessities of the case. [See also G. O. 53, Hdqrs. of Army, 1842; do. 2, War Dept., 1843; G. C. M. O. 47, Hdqrs. of Army, 1877; G. O. 53, Dept. of Va. and No. Ca., 1864; do. 40, Dept. of the East, 1868; G. C. M. O. 112, id., 1870; do. 90, id., 1871; G. O. 23, Dept. of the Lakes, 1870; do. 106, Dept. of Dakota, 1871; do. 93, Dept. of the South, 1873; do. 31, Mil. Div. of the Atlantic, 1873; G. C. M. O. 37, Dept. of Texas, 1880.] This, however, is *prevention* and *restraint,* not *punishment;* the authority to use the needful force in such cases will not justify the superior, when the offender is repressed or apprehended, in subjecting him to arbitrary punitory treatment.

Discretion regarding trial by summary court.—Paragraph 7, Circular No. 13, Adjutant-General's Office, December 5, 1891, reads as follows:

"The fact that the number of trials by inferior court-martial has greatly increased since the establishment of the summary court indicates that officers of the Army have the impression that under the present system they must bring every dereliction of duty before a court for trial, and that they are allowed no discretion in the matter. This is a mistake. Their discretion is the same now as it was under the garrison court system, and they are not obliged to bring cases before the summary court which they believe ought to be disposed of with an admonition or the withholding of privileges or indulgences. The extent of the exercise of this discretion, within these limits, is subject to the control of the commanding officer."

In accordance with the spirit of the foregoing, company commanders are authorized, subject to the control of the commanding officer of the post, to dispose of cases of derelictions of duty in their commands which would be within the jurisdiction of

THE RECORD.

1839. Every judge-advocate, or person acting as such, at any general court-martial shall, with as much expedition as the opportunity of time and distance of place may admit, forward the original proceedings and sentence of such court to the Judge-Advocate-General of the Army, in whose office they shall be carefully preserved.[1] Preparation and disposition. 113th Art. War.

1840. Every party tried by a general court-martial shall, upon demand thereof, made by himself or by any person in his behalf, be entitled to a copy of the proceedings and sentence of such court. *One hundred and fourteenth Article of War.* Party entitled to a copy. 114 Art. War.

1841. The judge-advocate will transmit the proceedings without delay to the officer having authority to confirm the sentence,[2] who will state at the end of the proceedings in Disposition of Record. Par. 1057, A. R., 1901.

---

inferior courts-martial, by requiring extra tours of fatigue, unless the soldier concerned demands a trial. This right to demand a trial must be made known to him. Circular 5, A. G. O., 1898.

[1] The legal record of a court-martial is that record which is finally approved and adopted by the court as a body and authenticated by its president and judge-advocate. The court as a whole is responsible for the record, and the instrument which it approves as such is its record, however the same may have been made up. It is immaterial to the sufficiency of a record whether the same was kept or written by the judge-advocate or a clerk. So where a clerk or reporter, appointed and sworn to keep the record, did not act, but the record was prepared by the judge-advocate or some other person employed by him to assist him, *held* that this circumstance did not affect the validity of the record as finally approved by the court. Dig. Opin. J. A. G., par. 2140.

For rules respecting the contents and preparation of the records of general courts-martial see Ibid., paragraphs 2136–2140:

Exhibits and appendixes.—It is not necessary to encumber a record by spreading upon its documents, or other writing or matter, excluded by the court. But it should specify the character of the writing and the grounds upon which it was ruled out.

Papers, books, certified copies of documents authorized by law to be used in evidence, and other instruments of documentary evidence which are submitted to the court and read in evidence during the progress of the trial, are noted in the record as "read to the court and appended, marked A, B, C," etc. When it is proposed to submit documentary evidence, its nature and character are explained to the court by the party in whose behalf it is submitted, and these statements, together with any objections to its admission which may be made by the opposite party, and the decision of the court in respect to its admission, are fully set forth in the record.

Loss or destruction of record.—Where the proceedings of a court-martial have regularly terminated, and the sentence has been confirmed and ordered to be executed by the proper and final reviewing authority, the fact that the record has since been *lost* does not impair or affect the judgment of the court, and constitutes no legal obstacle to the enforcement of the penalty. But where the record of the trial of a soldier who had pleaded not guilty, and in whose case considerable evidence had been introduced, was, by a casualty of war, lost before any action had been taken upon the sentence by the reviewing officer, *held* that, unless the court could be reconvened and a new record could be made out from extant original notes, the proceedings, inasmuch as they could not be intelligently reviewed or formally approved, should properly be considered as inoperative and the sentence of no effect. Ibid., par. 2139.

Held that the destruction, by fire or other casualty, of the record of the trial, conviction, and sentence of a deserter, before action could be taken upon the same, was of similar effect in law to an acquittal, and relieved the deserter from the forfeiture of pay due at the date of his desertion. Ibid.

[2] The 104th Article of War contains the requirement that "no sentence of a court-martial shall be carried into execution until the same shall have been approved by

each case his decision and orders. *Par. 1057, Army Regulations.*

REVISION PROCEEDINGS.

Revision proceedings.
Par. 1059, A. R., 1901.

1842. When the record of a court exhibits error in preparation, or seemingly erroneus conclusions, the reviewing authority may reconvene the court for a reconsideration of its action, pointing out defects.[1] Should the court con-

---

the officer ordering the court, or by the officer commanding for the time being." The record should therefore be forwarded by the judge-advocate to the convening officer, or to his successor in command, who, under the law, is authorized, by his approval of the findings and sentence, to make the latter operative. The proceedings are forwarded through the same channel, even where the sentence imposed is one which can only be made legally operative by the approval of superior authority; and it is the duty of the original reviewing officer to subject such proceedings to the same examination and review as would be applied to cases in which his approval and orders are final and conclusive.

Disposition of record.—Where the court was convened by a military officer—as, in a case of a *general* court, the general of the army or a department or army commander—it is the duty of the judge-advocate, upon the completion of the record, to transmit the same to such officer (or his successor in his command) for the proper action. Where the court was convened by the President, it is the duty of the judge-advocate to transmit the completed proceedings directly to the Judge-Advocate-General, (*a*) in order that, as the staff officer of the President, he may exercise the revisory function reposed in him by section 1199, Revised Statutes. (*b*)

[1] *Revision proceedings.*—Where the record of a trial, as forwarded to the reviewing authority for his action, is deemed by him to exhibit some error, omission, or other defect in the proceedings capable of being supplied or remedied by the court; as, for example, an inadequate, excessive, illegal, or irregular sentence, or a finding not authorized by the evidence; or an omission of some material matter—as a failure to prefix to the record a copy of the convening order, or to authenticate the proceedings by the signatures of the President or Judge-Advocate, or to enter the proper statement as to the members present, or to recite as to the offering to the accused of an opportunity to object to the same, or as to the qualifying of the court by the prescribed oaths, or to fully record the plea, finding, or sentence; or some mere clerical error in a matter of form—the court may and in general properly will be reconvened by the order of the reviewing officer (the convening authority or his successor in the command), for the purpose of correcting the record in the faulty particular, provided a correction be practicable. In a case of an *omission* the object of course is that the record may be made to conform with the *fact.* If the fact is that the proceeding, *apparently* merely omitted to be recorded, was *actually* not had, the proposed correction can not of course be made. There is no limit to the number of times that a court may be reconvened for a revision of its proceedings. It is not often, however, reassembled a second time where it declines on the first occasion to make the correction desired. (*c*) Dig. Opin. J. A. G., par. 2249.

The *order* reassembling the court will properly indicate the particular or particulars as to which a revision or correction is desired, or refer to papers accompanying it in which the supposed omission or other defect is set forth. Whether to make or not the proposed correction will be in the discretion of the court. The reviewing authority can not of course compel and would scarcely be authorized to *command* the court to make it. Ibid., par. 2250.

A correction can be made only by a legal court. At least five, therefore, of the members of the court who acted upon the trial must be present. That there are fewer members at the reassembling than at the trial is immaterial, provided five are

---

[a] See G. O. 72, War Dept., 1873; do. 39, Hdqrs. of Army, 1877.

[b] It may here be noted that the One hundred and thirteenth Article of War, the only statute relating to the forwarding, by judge-advocates, of the proceedings of general courts, is incomplete, and not in harmony with the provisions of arts. 104 and 109. The *practice* on the subject—as determined by par. 1057, Army Regulations, and the supplementary orders indicated in the foregoing note—represents quite accurately the existing law, and is as stated in the text.

[c] In the case of Judge-Advocate-General Swaim, tried by court-martial in 1885, the record was twice returned for revision. G. C. M. O., No. 19, War Dept., 1885.

cur in the views submitted, it will proceed by amendment to correct its errors, and may modify or completely change its findings. A reopening of the case, by calling or recalling witnesses, is illegal. *Par. 1059, Army Regulations, 1901.*

---

present. The judge-advocate should be present. If the court *closes*, however, he should withdraw. Dig. Opin. J. A. G., par. 2251.

It is not in general necessary or desirable that the accused be present at a revision. Where, however, any possible injustice may result from his absence, he should be required or permitted to be present, and with counsel if preferred. Thus where the defect to be corrected consists in an omission properly to set forth a special plea made or objection taken by the accused, it may be desirable that he should be present in order that he may be heard as to the proper form of the proposed correction. Where the error is *clerical* merely, or, though relating to a material particular, consists in the omission of a formal statement only, the presence of the accused is not in general called for. Ibid., par. 2252.

It is now settled in our law that a court-martial is not empowered at this proceeding to take or receive testimony.(*a*) Ibid., par. 2253.

The amendment can only be made by the court when duly reconvened for the purpose, and when made must be *the act of the court as such.* A correction made by the president or other member, or by the judge-advocate independently of the court, and by means of an erasure or interlineation or otherwise, is unauthorized and a grave irregularity. The correction must be wholly made and recorded in and by the formal proceedings upon the revision. The record of the correction as thus made will refer of course to the page or part of the record of the trial in which the omission or defect occurs; but this part of the record must be left precisely as it stands. The *court* is no more authorized to correct the same by erasure or interlineation on the page, or by the substitution for the defective portion of a rewritten corrected statement, than would be the judge-advocate or a member.(*b*) Ibid., par. 2254.

Where the court has been *dissolved*, or, by reason of any casualty or exigency of the service, can not practically be reconvened, there can of course be no correction of its proceedings. Ibid., par. 2257.

The procedure here contemplated is of course quite distinct from the ordinary revision and correction of its proceedings by a court-martial from day to day during a trial and before the record is completed. Ibid., par. 2258.

---

[a] See G. O. 47, Hdqrs. of Army, 1879.

[b] A record can not legally be *corrected* by an interlineation by the judge-advocate—as by the words "at hard labor" interlined in the sentence. Nor can it legally be corrected by a statement on the margin of a page, signed by the judge-advocate. Dig. Opin. J. A. Gen., 651, par. 15.

In the case of Private Gundlach, of the Hospital Corps, the sentence was set aside by the order of the President. "The record of the trial failed to show that the members of the court and judge-advocate were sworn, and on being returned for necessary action the court was not reconvened, as contemplated by paragraph 2, page 56, Court-Martial Manual, 1898, but the judge-advocate interlined a statement in the record that the members of the court and the judge-advocate were duly sworn. This action was unauthorized and invalid. A defective record returned for correction can only be amended to conform to the actual facts and by the court itself on revision when duly reconvened for the purpose." S. O., 99, H. Q. A. 1900. In the case of a cadet tried by general court-martial at the Military Academy in 1844 a verdict of acquittal was reached by the full court composed of seven members. On the following day, six members only being present, the acquittal reached at the previous day's session was revoked and a finding of guilty was reached and entered upon the record. In respect to this action on the part of the court it was remarked by the Secretary of War that "however it may be asserted that the usage and laws of courts-martial may sanction the right of the court to annul and entirely change their positive decision at any time before their final adjournment, yet it is a right which should be cautiously exercised, and only on obvious and extraordinary occasions. In the present case a full court acquitted the prisoner, and upon the next day a mutilated court—one member being absent—undertake to rescind the judgment of the previous day, and to pronounce the accused guilty and sentence him to punishment. It is not necessary to go into reasons and examples to show the danger and injustice which might result from a portion of the court upon the occasion of an accidental absence of one or more of its members reversing their judgment and changing innocence to guilt. To justify such a reversal the court should be as full and constituted precisely as it was when the judgment was pronounced. In consequence of this irregularity the proceedings of the court are disapproved and the accused ordered to be released from arrest and restored to duty. G. O. No. 40, War Dept., 1844.

THE REVIEWING AUTHORITY.

Par.
1843. Approval of sentence.
1844. The same, time of war.
1845. The same, confirmation.
1846. The same, general officers.
1847. Confirmation of death sentence.
1848. The same, dismissal of officer.
1849. The same, time of peace.
1850. Suspension of sentence.

1843. No sentence of a court-martialshall be carried into execution until the same shall have been approved by the officer ordering the court,[1] or by the officer commanding for the time being.[2] *One hundred and fourth Article of War.*

Approval of sentence by officer ordering court.

104 Art. War.

---

[1] This term is employed in military parlance to designate the officer whose province and duty it is to take action upon—approve or disapprove, etc.—the proceedings of a court-martial after the same are terminated, and when the record is transmitted to him for such action. This officer is ordinarily the commander who has convened the court. In his absence, however, or where the command has been otherwise changed, his successor in command, or, in the language of articles 104 and 109, "the officer commanding for the time being," is invested (by those articles) with the same authority to pass upon the proceedings and order the execution of the sentence in a case of conviction. Dig. Opin. J. A. G., par. 2227.

While approval gives life and operation to proceedings or sentence, disapproval, on the other hand, quite nullifies the same. A disapproval of the proceedings of a court-martial by the legal reviewing authority is not a mere expression of disapprobation, but a final, determinate act, putting an end to such proceedings in the particular case, and rendering them entirely nugatory and inoperative; and the legal effect of a disapproval is the same whether or not the officer disapproving is authorized finally to confirm the sentence. But to be thus operative a disapproval should be express. As frequently remarked in the opinions of the Judge-Advocate General, the mere absence of an approval is not a disapproval, nor can a mere reference of the proceedings to a superior without words of approval operate as a disapproval of the proceedings or sentence. (*a*) The effect of the disapproval, wholly, of a conviction or sentence is not merely to annul the same as such, but also to prevent the accruing of any disability, forfeiture, etc., which would have been incidental upon an approval. (*b*) A disapproval of a conviction of a particular offense also operates to nullify the conviction of any lesser included offense, involved in the conviction of the specific offense charged.

Where the original reviewing officer disapproves a sentence, to the execution of which the confirmation of superior authority is made requisite by the code, as where (in time of peace) the department commander who has convened the court, in the case of an officer, disapproves a sentence of dismissal adjudged thereby, the sentence being nullified in law, there remains nothing for the superior authority to act upon, and to transmit the proceedings to him for action will be improper and unauthorized.

A reviewing officer can not disapprove a sentence and then proceed to mitigate or commute the punishment, since upon the disapproval there is nothing left in the case upon which any such action can be based.

It is quite immaterial to the legal effect of a disapproval whether any reasons are given therefor, or whether the reasons given are well founded in fact or sufficient in law. Ibid., par. 2229.

[2] The "officer commanding for the time being," indicated in this article, is an officer who has succeeded to the command of the officer who convened the court, as where the latter has been regularly relieved and another officer assigned to the command, or where the command of the convening officer has been discontinued and merged in a larger or other command, at some time before the proceedings of the court are completed and require to be acted upon. Thus where, under the circumstances, a

---

[a] See XVI Opin. Att. Gen., 312, where it is remarked that it is not a legal disapproval of a conviction or sentence for the original reviewing officer, in forwarding the proceedings for the action of superior authority, to indorse upon the same an opinion to the effect that the finding is not sustained by the evidence.

[b] A disapproval of a sentence by the proper reviewing authority is "tantamount to an acquittal by the court." XIII Opin. Att. Gen., 460.

1844. No sentence of a court-martial appointed by the commander of a division or of a separate brigade of troops, directing the dismissal of an officer, shall be carried into execution until it shall have been confirmed by the general commanding the army in the field to which the division or brigade belongs. *One hundred and seventh Article of War.*

The same, confirmation by division or brigade commanders.

Dec. 24, 1861, c. 3, v. 12, p. 330.

107 Art. War.

---

separate brigade has ceased to exist as a distinctive organization and been merged in a division, or a division has been similarly merged in an army or department, the commander of the division in the one case, and of the army or department in the other, is "the officer commanding for the time being" in the sense of the article. So where, before the proceedings of a garrison court convened by a post commander were completed, the post command had ceased to exist and the command become distributed in the department, *held* that the department commander, as the legal successor of the post commander, was the proper authority to approve the sentence under this article. Dig. Opin. J. A. G., par. 326.

Where a department command was discontinued, without being transferred to or included in any other specific command, *held* that the general in command of the army was "the officer commanding for the time being," and the proper authority to act, under this article and the one hundred and ninth, upon the proceedings and sentence of a court which had been ordered by the department commander, but whose judgment had not been completed at the time of the discontinuance of the command. Ibid., par. 333.

The "officer commanding for the time being" must, to legally act, have the necessary qualifications. Thus, where the sentence is one of a general court-martial, this officer must have the same rank and status as the convening officer must have had under the seventy-second article, i. e., he must be either a general officer commanding the army, division, or department, or a colonel commanding the department. Ibid., par. 335.

In cases, however, of sentences of dismissal and of death, imposed in time of peace, and of some death sentences adjudged in time of war, as also of all sentences, "respecting general officers," while the convening officer (or his successor) is the original reviewing authority, with the same power to approve or disapprove as in other cases, yet inasmuch as it is prescribed by articles 105, 106, 108, and 109 that the sentence shall not be executed without the confirmation of the President, the latter becomes in these cases the final reviewing officer, when, the sentence having been approved by the commander (for, if disapproved by him, there is nothing left to be acted upon by the superior), the record is transmitted to him for his action. A similar division of the reviewing function exists in cases in which sentences are approved, but the execution of the same is suspended, and the question of their execution referred to the President, under article 111. The same function is also shared between inferior and superior commanders, under article 107, in cases in which sentences are imposed by division or separate brigade courts. So, under article 110, in cases of sentences adjudged by field officers' courts in time of war.

Where a general court-martial is convened directly by the President, as commander in chief, he is, of course, both the original and final reviewing authority. Ibid. See, also, in connection with the review of proceedings, the MANUAL FOR COURTS-MARTIAL.

The reviewing authority should properly authenticate the action taken by him in any case by subscribing in his own hand (adding his rank and command, as indicating his legal authority to act) the official statement of the same as written in or upon the record. Impressing the signature by means of a stamp is not favored. Ibid., par. 2233.

In acting upon the proceedings of a court-martial, the legal reviewing officer acts partly in a judicial and partly in a ministerial capacity. He "decides" and "orders," and the due exercise of his proper functions can not be revised by superior military authority. Thus *held* that a reviewing officer who had duly acted upon a sentence and promulgated his action in orders could not be required by a higher commander, or by the Secretary of War, to revoke such action. If the sentence be deemed unwarranted or excessive, relief may be extended through the power of pardon or remission. Ibid., par. 2243.

This article is properly to be complied with by an approval of the sentence (where the same is approved in fact) by "the officer ordering the court," etc., although—as in a case of a sentence of dismissal in time of peace—he may not be empowered finally

The same, confirmation by officer ordering court.
109 Art. War.

1845. All sentences of a court-martial may be confirmed and carried into execution by the officer ordering the court, or by the officer commanding for the time being, where confirmation by the President, or by the commanding general in the field, or commander of the department, is not required by these articles. *One hundred and ninth Article of War.*

---

to confirm and give effect to the sentence. His approval is required as showing that he does not, as he is authorized to do, disapprove. Dig. Opin. J. A. G., par 323.

The approval of the sentence indicated by this article should properly be of a formal character. An indorsement, signed by the commander, of the single word "approved"—a form not unfrequently employed during the late war—though strictly sufficient in law, is irregular and objectionable. So, *held* that a mere statement, written in or upon the proceedings, in transmitting them to the President, that the record was "forwarded" for the action of superior authority, was insufficient as not implying the requisite approval according to the article. And similarly *held* of a mere recommendation that the proceedings be approved by such authority. Ibid., par. 324.

A military commander can not, of course, delegate to an inferior or other officer his function as reviewing authority of proceedings or sentence of a court-martial, as conferred by the one hundred and fourth or one hundred and ninth article of war or other statute. Nor can he, regularly, authorize a staff or other officer to write and subscribe for him the action, by way of approval, disapproval, etc., which he has decided to take upon such proceedings. An approval purporting to be subscribed by the commander, "by" his staff judge-advocate or assistant adjutant-general, would be open to question and quite irregular, as would also be any action subscribed by such an officer purporting to be taken "in the absence and by the direction of" the commander. Ibid., par. 2234.

Action taken by a reviewing officer upon the proceedings and sentence of a court-martial may be recalled and modified before it is published, and the party to be affected is duly notified of the same. After such notice the action is beyond recall. The power of remission, indeed, may be exercised so long as any part of the punishment imposed remains unexecuted. But when the final approval of the sentence (or other action taken) has been once officially communicated to the accused, the function and authority of the reviewing authority as such over and respecting the same is exhausted and can not be revived. An approval can not then be substituted for a disapproval, or vice versa. Ibid., par. 2235.

A disapproval of a finding by the proper reviewing authority has the same legal effect as an acquittal, and the soldier can not be made to suffer any of the legal consequences of a conviction. Ibid., 675, par. 9.

Held a good ground for the disapproval of a sentence that the court denied the request of the accused to have summoned a clearly material and important witness, whose testimony would not have been merely cumulative. Ibid., par. 2238.

It is beyond the power of the reviewing officer to change, by his own action, a finding. Thus where, in a case of conviction of desertion, the reviewing authority approved "so much only of the finding of guilty of desertion as convicted the accused of absence without leave," *held* that he thus substituted a finding of his own for that of the court, and that his action was unauthorized. Ibid., par. 2239.

It is within the authority of a department commander, as reviewing officer, in a case in which a soldier of his command has been sentenced to confinement in a penitentiary, to designate a particular penitentiary within such command as the place of confinement. Ibid., par. 2240.

It is an established principle that when the final action of the reviewing officer has been published in orders to the command and notified to the accused, his power of approval and disapproval in the case is exhausted, and his action can not be recalled or modified. Where a department commander applied to the War Department for the return of the proceedings in a case in order that he might modify his action thereon, *held* that as the same had been formally promulgated in orders and had duly taken effect, the power of the reviewing officer over the case was exhausted, and the application could not legally be complied with. Ibid., par. 2236.

But where, after the reviewing commander had approved a sentence in general orders, and the court had been dissolved, it was discovered that there was a fatal defect in the proceedings in that they did not show that the court or judge-advocate had been sworn in the case, *held* that the commander would properly issue a supple-

The same, sentences respecting general officers. **108 Art. War.**

1846. No sentence of a court-martial, either in time of peace or in time of war, respecting a general officer, shall be carried into execution until it shall have been confirmed by the President. *One hundred and eighth Article of War.*

Confirmation of death sentence. **105 Art. War.** July 17, 1862, c. 201, s. 5, v. 12, p. 598; Mar. 3, 1863, c. 75, s. 21, v. 12, p. 735; July 2, 1864, c. 215, s. 1, v. 13, p. 356.

1847. No sentence of a court-martial inflicting the punishment of death shall be carried into execution until it shall have been confirmed by the President; except in the cases of persons convicted, in time of war, as spies, mutineers, deserters, or murderers, and in the cases of guerrilla marauders, convicted, in time of war, of robbery, burglary, arson, rape, assault with intent to commit rape, or of violation of the laws and customs of war; and in such excepted cases the sentence of death may be carried into execution upon confirmation by the commanding general in the field, or the commander of the department, as the case may be. *One hundred and fifth Article of War.*

Confirmation of sentences of dismissal in time of peace. **106 Art. War.**

1848. In time of peace no sentence of a court-martial directing the dismissal of an officer shall be carried into execution until it shall have been confirmed by the President.[1] *One hundred and sixth Article of War.*

---

mental order declaring the proceedings a nullity and the original order inoperative and withdrawn on account of the defect. (*a*) Dig. Opin. J. A. G., par. 2242.

Where the convening commander dissolves a court pending a trial, his power as to that court is exhausted, and he can not revive it as such. He may reconvene the same members as a court-martial, but it will be another and distinct tribunal. Ibid., 676, par. 16.

[1] The article does not require that the confirmation of the sentence shall be signed by the President, nor does it prescribe any form in which the confirmation shall be declared. *Held*, therefore, that a written approval of a sentence of dismissal authenticated by the signature of the Secretary of War, or expressed to be by his order, was a sufficient confirmation within the article; the case being deemed to be governed by the well-established principle that where, to give effect to an Executive proceeding, the personal signature of the President is not made essential by law, that of the head of the Department to which the subject belongs shall be sufficient for the purpose; the assent of the President to his order or direction being presumed, and his act being deemed in law the act of the President whom he represents. (*b*) Ibid., par. 337.

The word "approved," employed by the President in passing upon a sentence of dismissal, *held* to be substantially equivalent to "confirmed," the word used in the

---

a See G. C. M. O., 23, Dept. Dakota, 1888, setting aside void sentences and restoring to duty the prisoners, both of whom were serving confinement, and had been under the terms of the void sentences dishonorably discharged. See also G. C. M. O., 20, Dept. Cal., 1890, where a void sentence was set aside, the dishonorable discharge "canceled" and the prisoner restored to duty.

If, however, the court has not been dissolved it may be reconvened to amend its record to conform to the actual facts; that is, to make it speak the truth. See par. 19, S. O., 99, A. G. O., 1900, in which the following is promulgated: "By direction of the President, the sentence in the case * * * published in paragraph 1, Special Orders, No. 214, Headquarters Separate Brigade, Provost Guard, Manila, Philippine Islands, November 8, 1899, is set aside. The record of the trial failed to show that the members of the court and judge-advocate were sworn, and on being returned [by the War Department] for necessary action the court was not reconvened, as contemplated by paragraph 2, page 56, Court-Martial Manual, 1898, but the judge-advocate interlined a statement in the record that the members of the court and judge-advocate were duly sworn. This action was unauthorized and invalid. A defective record returned for correction can only be amended to conform to the actual facts and by the court itself on revision when duly reconvened for the purpose."

b This view has been sustained by an opinion of the Attorney-General of June 6, 1877 (XV Opins., 290), and by a report of the Judiciary Committee of the Senate of March 3, 1879, Report No. 868, Forty-fifth Congress, third session. From this report, indeed, two members of the committee dissented in a subsequent report of April 7, 1879, Mis. Doc. No. 21, Forty-sixth Congress, first session.

Suspension of sentences of death or dismissal pending Executive action.
111 Art. War.

1849. Any officer who has authority to carry into execution the sentence of death, or of dismissal of an officer, may suspend the same until the pleasure of the President shall be known; and in such case he shall immediately transmit to the President a copy of the order of suspension, together with a copy of the proceedings of the court.[1] *One hundred and eleventh Article of War.*

Pardon and mitigation of punishment.
July 17, 1862, c. 201, s. 7, v. 12, p. 598.
112 Art. War.

1850. Every officer who is authorized to order a general court-martial shall have power to pardon or mitigate any punishment adjudged by it, except the punishment of death or of dismissal of an officer. Every officer commanding a regiment or garrison in which a regimental or garrison court-martial may be held, shall have power to pardon or mitigate any punishment which such court may adjudge.[2] *One hundred and twelfth Article of War.*

---

article. In practice the two words are used indifferently in this connection. Dig. Opin. J. A. G., par. 386.

This subject has been more recently considered by the United States Supreme Court in a succession of cases (Runkle *v.* U. S., 122 U. S., 543; U. S. *v.* Page, 137 U. S., 673; U. S. *v.* Fletcher, 148 U. S., 84), the effect of which is that a statement of approval of a sentence of dismissal, authenticated by the Secretary of War, is legally sufficient, provided that it appear by clear presumption therefrom that the proceedings have actually been submitted to the President.

In an opinion of the Attorney-General of April 1, 1879 (XVI Opins., 298), it was held that a confirmation of a sentence of dismissal of an officer, though irregularly and unduly authenticated, would be ratified by an appointment by the President of another officer to fill the supposed vacancy, and that the appointment thus made would be valid and operative.

[1] An officer suspending the execution of a sentence for the action of the President under this article should first formally approve the same. Simply to forward the proceedings, stating that the sentence has been suspended, is incomplete and irregular. If the commander disapproves the sentence, he can not, of course, suspend and transmit under this article, since there remains nothing for the President to act upon. Ibid., par. 339.

Where a case is submitted to the President for his action under this article, he may approve or disapprove the sentence in whole or in part, and, if approving, may exercise the power of remission or mitigation. Ibid., par. 340.

[2] The reviewing authority, in approving the punishment adjudged by the court and ordering its enforcement, is authorized, if he deems it too severe, to graduate it to the proper measure by reducing it in quantity or quality, without changing its species; this is mitigation. Imprisonment, fine, forfeiture of pay, and suspension are punishments capable of mitigation. As an instance of a mitigation both in quantity and quality, *held* that a sentence of imprisonment for three years in a penitentiary was mitigable to an imprisonment for two years in a military prison.[a] Ibid., par. 345.

Held that a reviewing officer other than the President was not empowered by this article to commute a punishment; that the "pardon" here specified was remission, which, unlike the pardoning power vested in the President, did not include commutation or conditional pardon. So, *held* that a reviewing commander was not authorized to commute the punishment of dishonorable discharge, and that, as such pun-

---

[a] The power to remit or commute sentences of death and dismissal is reserved by this article for the President. A military commander can not exercise such power, even where, in time of war, he is authorized to approve and execute the sentence. He may then, however, if he thinks that the sentence should be remitted or commuted, suspend its execution for the action of the President (with a recommendation to clemency) under the preceding article. VI Opin. Att. Gen., 124, 125.

See opinion of Judge-Advocate-General published in G. O., 71, War Department, 1875; I Opin. Att. Gen., 327; 4 ibid., 444. (It may be noted that these early opinions of the Attorney-General inaccurately describe the substitution of a lesser punishment for a death sentence as a mitigation, the proceeding being properly commutation.)

THE INFERIOR COURTS-MARTIAL.

Par.
1851, 1852. The regimental court-martial.
1853. The garrison court-martial.
Par.
1854. Power of inferior courts to punish.
1855–1861. The summary court.

1851. Every officer commanding a regiment or corps[1] shall, subject to the provisions of article eighty, be competent to appoint, for his own regiment or corps, courts-martial, consisting of three officers, to try offenses not capital.[2] *Eighty-first Article of War.*

Regimental courts-martial.
81 Art. War. July 17, 1862, c. 201, s. 7, v. 12, p. 598.

---

ishment was not susceptible of mitigation, it could not legally be reduced under this article. Dig. Opin. J. A. G., par. 347.

The substitution of the punishment of confinement for that of dishonorable discharge, imposed by sentence of court-martial, would not, of course, be authorized by way of mitigation (which can not change the nature of the punishment), but may be affected by a commutation of the sentence by the President, accepted by the soldier. See the action of the President in the case of Private Hayes, Fifth Artillery, in G. C. M. O., 58, of 1888. Ibid., par. 348.

The order prescribing maximum punishments was not intended to and does not affect the established principle that the reviewing authority, in the exercise of his power of mitigation, can not change the kind of punishment. The power of substitution which may be exercised by the court under the order has no relation to the power of the reviewing officer. Thus *held* that the substitution by the reviewing officer of confinement for forfeiture, though the period of confinement proposed were less than the court could have substituted, would not be legal mitigation. Ibid., par. 357.

Where a prisoner is serving out a sentence of imprisonment at a military prison or place of confinement within the command of the officer who approved the proceedings, such officer (or his successor in the command) may, under this article, remit at any time the unexpired portion of the pending confinement, although the punishment of dishonorable discharge, imposed by the same sentence, may meanwhile have been duly executed. Ibid., par. 349.

A military commander vested with the power of pardon or mitigation under this article is not authorized to delegate the same to an inferior. Thus *held* that a department commander could not legally authorize a post commander to remit in part, upon good behavior, the punishment of a soldier under sentence at the post of the latter, who had been convicted by a general court, convened, and whose proceedings had been acted upon, by the former. Ibid., par. 342.

A punishment can not be pardoned or mitigated under this article where it has been once duly executed. Where, however, a sentence has been executed only in part, it may be remitted as to the portion remaining unexecuted. Ibid., par. 343.

The pardoning power here given is not limited in its exercise to the moment of the approving of the sentence, but may be employed as long as there remains any material for its exercise. Under this article, as interpreted by the usage of the service, a department (or army) commander may remit at any time, in his discretion, for any cause deemed by him to be sufficient, the unexecuted portion of the sentence of any soldier confined in his command under a sentence imposed by a court-martial convened by him or by a predecessor in the command. Ibid., par. 344.

[1] *Held* that the Chief of Engineers was authorized to order a court under this article for the trial of soldiers of the engineer battalion; the same, in connection with the engineer officers of the Army, being deemed, in view of sections 1094, 1151, 1154, etc., of the Revised Statutes, to constitute a "corps" in the sense of the article. So *held* that the Chief of Ordnance was authorized to convene such a court for the trial of the enlisted men authorized by section 1162, Revised Statutes, to be enlisted by him; the same being deemed to constitute, with the ordnance officers, such a separate and distinct branch of the military establishment as to come within the general designation of "corps" employed in the article. So *held* that the Chief Signal Officer, under the provisions of the acts of July 24, 1876, June 20, 1878, etc., relating to his branch of the service, was authorized to order courts-martial, as commanding a "corps" in the sense of this article. Ibid., par. 212.

[2] The jurisdiction of the regimental court-martial sitting as a criminal tribunal and that of the garrison court-martial also, in respect to persons and cases have been very

Redress of wrongs. 30 Art. War.

1852. Any soldier who thinks himself wronged by any officer may complain to the commanding officer of his regiment, who shall summon a regimental court-martial for the doing of justice to the complainant.[1] Either party may appeal from such regimental court-martial to a general court-martial; but if, upon such second hearing, the appeal appears to be groundless and vexatious, the party appealing shall be punished at the discretion of said general court-martial.[2] *Thirtieth Article of War.*

Garrison courts-martial.

1853. Every officer commanding[3] a garrison, fort, or other place,[4] where the troops consist of different corps,[5]

---

materially restricted by the act of June 18, 1898 (30 Stat. L., 483), which created the summary court. These courts can now try only noncommissioned officers, who if they object to trial by the summary court are required to be brought before regimental or garrison courts for trial, unless their trial by summary court is directed by the authority "of the officer competent to order their trial by general court-martial," and by the act of March 2, 1901 (31 Stat. L., 951), which authorizes an enlisted man, in the case therein stated, to appeal to a garrison or regimental court. See paragraph 1854, *post.*

[1] The authority to summon a regimental court under this article is vested in terms in the regimental commander. A department or other superior commander can not properly exercise such authority, nor will his order add to the validity or effect of the proceeding.

[2] There are two manifest and unqualified limitations to the province of the regimental court under this article, viz: (1) It can not usurp the place of a court of inquiry; (2) it can take no cognizance of matters which it would be beyond the power of the regimental commander to redress. When the matter is beyond the reach of the commander, it is beyond the jurisdiction of this court. If it involve a question of irregular detail, excessive work or duty, wrongful stoppages of pay or the like, a regimental court under this article may be resorted to for the correction of the wrong. Otherwise when the case is one of a wrong such as can be righted only by the punishment of the officer. Dig. Opin. J. A. G., par. 42.

The "regimental court-martial" under the 30th A. W. can not be used as a substitute for a general court-martial or court of inquiry, for it can not try an officer nor make an investigation for the purpose of determining whether he shall be brought to trial. When, if the soldier's complaint should be sustained, the only redress would be a reprimand to the officer, the matter would not be within the jurisdiction of this court. It can only investigate such matters as are susceptible of redress by the doing of justice to the complainant—that is, when in some way he can be set right by putting a stop to the wrongful condition which the officer has caused to exist. Erroneous stoppages of pay, irregularity of detail, the apparent requirement of more labor than from other soldiers and the like might in this way be investigated and the wrongful condition put an end to. The court will in such cases record the evidence and its conclusions of fact and recommend the action to be taken. The members of the court (and the judge-advocate) will be sworn faithfully to perform their duties as members (and judge-advocate) of the court, and the proceedings will be recorded as nearly as practicable in the same manner as the proceedings of ordinary courts-martial. MANUAL FOR COURTS-MARTIAL.

[3] It is not essential that the "officer commanding" should be of the rank of field officer. A commanding officer, though a captain or lieutenant, may convene a court-martial under this article, provided he has the required command. Dig. Opin. J. A. G., par. 214.

[4] The general term "other place" is deemed to be intended to cover and include any situation or locality whatever—post, station, camp, halting place, etc.—at which there may remain or be, however temporarily, a separate command or detachment in which different corps of the Army are represented, as indicated in the next paragraph. If such a command, so situated, contains three officers, other than the commander, available for service on court-martial, the commander will be competent to exercise the authority conferred by this article. Ibid., par. 216.

[5] *Held*, in view of the early orders (*a*) relating to the subject and of the practice

[a] The original order is G. O., 5 headquarters of Army, 1843. And see the law as announced later in G. O., 13, Fourth Military District, 1867.

shall, subject to the provisions of article eighty,[1] be competent to appoint, for such garrison or other place, courts-martial, consisting of three officers, to try offenses not capital.[2] *Eighty-second Article of War.*

July 17, 1862, c. 201, s. 7, v. 12, p. 589; Feb. 18, 1875, c. 80, v. 18, p. 318. 82 Art. War.

Power of inferior courts to punish. Mar. 2, 1901, s. 4, v. 31, p. 951. 83 Art. War.

1854. Regimental and garrison courts-martial and summary courts detailed under existing laws to try enlisted men shall not have power to try capital cases or commissioned officers, but shall have power to award punishment not to exceed confinement at hard labor for three months or forfeiture of three months' pay, or both, and in addition thereto, in the case of noncommissioned officers, reduction to the ranks, and in the case of first-class privates, reduction to second-class privates: *Provided,* That a summary court shall not adjuge confinement and forfeiture in excess of a period of one month, unless the accused shall before trial consent in writing to trial by said court, but in any case of refusal to so consent, the trial may be had either by general, regimental, or garrison court-martial, or by said summary court, but in case of trial by said summary court without consent as aforesaid, the court shall not adjuge confinement or forfeiture of pay for more than one month.[3] *Section 4, act of March 2, 1901* (*31 Stat. L., 951.*)

---

thereunder, that the presence on duty with a garrison, detachment, or other separate command, at a fort, arsenal, or other post or place, and as a part of such command, of a single representative, officer or soldier, of a corps, arm, or branch of the service other than that of which the bulk of the command is composed—as an officer of the quartermaster, subsistence, or medical department, a chaplain, an ordnance sergeant or hospital steward, an officer or soldier of artillery where the command consists of infantry or cavalry, or vice versa, etc.—might be deemed sufficient to fix upon the command the character of one "where the troops consist of different corps," in the sense of this article, and to empower the commanding officer to order a court-martial under the same. The presence, however, with the command of a civilian employee of the Army—an acting assistant or contract surgeon—could have no such effect. Dig. Opin. J. A. G., par. 217.

[1] The Eightieth Article of War, which was repealed by the act of June 18, 1898 (30 Stat. L., 483), gave the field officers court exclusive jurisdiction, in time of war, to try enlisted men for offenses cognizable by the inferior courts-martial. As this court was abolished by the act of June 18, 1898, and its jurisdiction vested in the new summary court created by that act, this clause is no longer operative.

[2] A commanding officer is not authorized to detail himself, with two other officers, as a court under this (or the preceding) article. An "acting assistant surgeon," not being an officer of the Army, can not be detailed on such court. Ibid., par. 215.

[3] Capital offenses (i. e., offenses capitally punishable), not being within the jurisdiction of inferior courts, such courts can not take cognizance of acts specifically made punishable by article 21, however slight be the offenses actually committed.(*a*)

While inferior courts have, equally with general courts, jurisdiction of all military offenses not capital, committed by enlisted men, yet, in view of the limitations upon their authority to sentence, it is in general inexpedient to resort to them for the trial of the graver offenses, such as larcenies, aggravated acts of drunkenness, protracted absences without leave, etc., a proper and adequate punishment for which would be beyond the power of such tribunals. The more serious offenses should, where practicable, be referred for trial to general courts, which alone are vested with a full dis-

---

a G. O., 21, Headquarters of Army, 1858. And see G. O., 18, War Department, 1859; G. O., 9, Department of Utah, 1858, where the proceedings of garrison courts in cases of capital offenses are pronounced void.

THE SUMMARY COURT.

Constitution and composition.
June 18, 1898, v. 30, p. 483.

1855. The commanding officer of each garrison, fort, or other place, regiment or corps, detached battalion or company, or other detachment in the Army, shall have power to appoint for such place or command, or in his discretion for each battalion thereof, a summary court to consist of one officer to be designated by him, before whom enlisted men who are to be tried for offenses, such as were prior to the passage of the act "to promote the administration of justice in the Army," approved October first, eighteen hundred and ninety, cognizable by garrison or regimental courts-martial, and offenses cognizable by field officers detailed to try offenders under the provisions of the eightieth and one hundred and tenth Articles of War,[1] shall be brought to trial within twenty-four hours of the time of the arrest, or as soon thereafter as practicable,[2]

---

cretion to impose punishment in proportion to the gravity of the offense. Dig. Opin. J. A. G., par. 224.

A sentence forfeiting pecuniary allowances in addition to pay, where the entire forfeiture amounted to a sum greater than one month's pay, *held* not authorized under this article. Ibid., par. 220.

A sentence, adjudged by a garrison court, of confinement "till the expiration of the term of service" of a soldier, *held* unauthorized unless the soldier had not more than one month left to serve. Ibid., par. 221.

The limitation of the authority of inferior courts in regard to sentences of imprisonment and fine, *held* not to preclude the imposition by them of other punishments sanctioned by the usage of the service; such, for example, as reduction to the ranks, either alone or in connection with those or one of those expressly mentioned. Ibid., par. 222.

The limitations imposed by the article have reference, of course, to single sentences. For distinct offenses made the subject of different trials, resulting in separate sentences, a soldier may be placed at one and the same time under several penalties of forfeiture and imprisonment, or of either, exceeding together the limit affixed by the article for a single sentence. (*a*) Ibid., par. 223.

[1] This court replaces the summary court created by the act of October 1, 1890 (26 Stat. L., 648), which was restricted in its operations to a time of peace. The jurisdiction of the new summary court extends to cases which were formerly tried by regimental and garrison courts, and is exclusive, in respect to the trial of enlisted men charged with minor offenses, except in cases of noncommissioned officers who object to being tried by the summary court. When such objection is made the offender, being a noncommissioned officer, is entitled to be tried by a regimental or garrison court, unless the authority for his trial has been obtained from the authority competent to order the trial of the offender by a general court-martial. The act of June 18, 1898, became operative, in accordance with its terms, on August 17, 1898 (G. O., 80, A. G. O., 1898). Commanding officers of division field hospitals and division ambulance companies, being responsible direct to the division surgeons and division commanders, have authority to appoint summary courts. Par. 2, Circular No. 49, A. G. O., 1898.

[2] The provision of the act that accused soldiers shall be brought before the summary court for trial "within twenty-four hours from the time of their arrest" is not a statute of limitations nor jurisdictional in its character, but directory only—directory upon the officers whose duty it is to bring offenders before the court. The proceedings will thus be legally valid though the accused does not appear for trial

---

[a] See G. O., 18, War Department, 1859.

except when the accused is to be tried by general court-martial; but such summary court may be appointed and the officer designated by superior authority when by him deemed desirable.[1] *Act of June 18, 1898* (*30 Stat. L., 483*).

Jurisdiction. *Ibid.*

1856. The officer holding the summary court shall have power to administer oaths and to hear and determine such cases, and when satisfied of the guilt of the accused adjudge the punishment to be inflicted,[2] which said punishment shall not exceed confinement at hard labor for three months and forfeiture of three months' pay, and, in addition thereto, in the case of a noncommissioned officer, reduction to the ranks; and, in the case of first-class privates, reduction to second-class privates. *Ibid.*

Record. *Ibid.*

1857. There shall be a summary court record kept at each military post and in the field at the headquarters of the proper command, in which shall be entered a record of all cases heard and determined and the action had thereon; and no sentence adjudged by said summary court shall be executed until it shall have been approved by the officer appointing the court, or by the officer commanding for the time being.[3] *Ibid.*

---

within the period specified. So *held*, in a case of an accused soldier arrested on Saturday, that the court did not, by not sitting on Sunday, lose jurisdiction; and therefore that it is not necessary that a summary court should ever sit on a Sunday. Dig. Opin. J. A. G., par. 2395.

The provision in the act in regard to the trial being had within twenty-four hours of the arrest being directory only, a trial held after that time is entirely valid. Thus, where a soldier, by reason of drunkenness or otherwise, is not in a condition to be tried within that time, his trial may be postponed till he is in such condition. Ibid., par. 2396.

[1] The procedure of the summary court should be similar to that of the older courts-martial. The charges and specifications should be read to the accused, and he be required to plead guilty or not guilty, and the witnesses should be sworn. But the testimony is not set forth in the record. Ibid., par. 2398. For procedure of this court see MANUAL FOR COURTS-MARTIAL, pp. 65–69, 121, 122.

Held that the provision of the ninety-fourth Article of War relating to the hours of session of courts-martial was not applicable to summary courts. Ibid., par. 2397.

[2] The act of June 18, 1898, in providing that the trial officer "shall have power to administer oaths," has reference to the oaths of witnesses. The officer himself is not sworn. But the witnesses must be sworn; and, in a case in which it appeared that they were not in fact sworn, *held* that the proceedings and sentence were invalidated, and that a forfeiture imposed was illegally charged against the accused, who should be credited with the amount of the same on the next muster and pay roll. But the record need not state in terms that the witnesses were sworn; it will be presumed that the law has been complied with unless the contrary appears. Dig. Opin. J. A. G., par. 2239.

A summary court is not empowered to issue process of attachment to compel the attendance of a civilian witness. Ibid., par. 2400.

A summary court is not empowered to impose a sentence of dishonorable discharge. Such punishment is not in terms authorized by article 83 to be adjudged by regimental or garrison courts, and it is impliedly restricted to general courts by the fourth Article of War. Ibid., par. 2402.

[3] For form of record see MANUAL FOR COURTS-MARTIAL, pp. 121, 122.

Commanding officer.
Ibid.

1858. When but one commissioned officer is present with a command he shall hear and finally determine such cases.[1] *Ibid.*

Candidates. Noncommissioned officers.
Ibid.

1859. No one while holding the privileges of a certificate of eligibility to promotion shall be brought before a summary court, and noncommissioned officers shall not, if they object thereto, be brought to trial before summary courts without the authority of the officer competent to order their trial by general court-martial, but shall in such cases be brought to trial before garrison, regimental, or general courts-martial, as the case may be. *Ibid.*

Approval.
Ibid.

1860. The commanding officers authorized to approve the sentences of summary courts and superior authority shall have power to remit or mitigate the same.[2] *Sec. 3, ibid.*

Report.
Ibid.

1861. Post and other commanders shall, in time of peace, on the last day of each month, make a report to the department headquarters of the number of cases determined by summary court during the month, setting forth the offenses committed and the penalties awarded, which report shall be filed in the office of the judge-advocate of the department, and may be destroyed when no longer of use.[3] *Sec. 4, ibid.*

MILITARY COMMISSIONS.

Spies.
Apr. 10, 1806, c. 20, s. 2, v. 2, p. 371; Feb. 13, 1862, c. 25, s. 4, v. 12, p. 340; Mar. 3, 1863, c. 75, s. 38, v. 12, p. 737.

1862. All persons who, in time of war, or of rebellion against the supreme authority of the United States, shall be found lurking or acting as spies, in or about any of the fortifications, posts, quarters, or encampments of any of the armies of the United States, or elsewhere, shall be triable by a general court-martial, or by a military commission,[1] and shall, on conviction thereof, suffer death.

---

[1] Where a post commander sits as a summary court no approval of the sentence is required by law, but he should sign the sentence and date his signature. A certification by the post adjutant is unnecessary and irregular and should not be permitted.

[2] By the act of July 28, 1892, "commanding officers authorized to approve the sentences of summary courts" are empowered to "remit or mitigate the same." *Held,* that where a soldier who had been convicted by a summary court had passed into another command, so that the officer who approved his sentence was no longer his commanding officer, such officer could not legally exercise the power of remission or mitigation of the sentence. Dig. Opin. J. A. G., par. 2403.

[3] For form of report see MANUAL FOR COURTS-MARTIAL, p. 122.

Discretion respecting trials by summary courts.—Paragraph 7, Circular No. 13, A. G. O., December 5, 1891, reads as follows: "The fact that the number of trials by inferior courts-martial has greatly increased since the establishment of the summary court indicates that officers of the Army have the impression that under the present system they must bring every dereliction of duty before a court for trial, and that they are allowed no discretion in the matter. This is a mistake. Their discretion is the same now as it was under the garrison-court system, and they are not obliged to bring cases before the summary court which they believe ought to be disposed of with an admonition, or the withholding of privileges or indulgences. The extent of the exercise of this discretion within those limits is subject to the control of the commanding officer." In accordance with the spirit of the foregoing, company commanders are authorized, subject to the control of the commanding officer of the post, to dispose of cases of derelictions of duty in their commands which would be within the jurisdiction of inferior courts-martial by requiring extra hours of fatigue, unless the soldier demands a trial. This right to demand a trial must be made known to him. Circular No. 5, A. G. O., 1898.

COURTS OF INQUIRY.

Par.
1863. Constitution; restriction.
1864. Composition.
1865. Oaths.
1866. Witnesses.
Par.
1867. Opinion, when given.
1868. Record, authentication.
1869. The same, use in evidence.

Courts of inquiry.
115 Art. War.

1863. A court of inquiry, to examine into the nature of any transaction of, or accusation or imputation against, any officer or soldier, may be ordered by the President or by any commanding officer; but, as courts of inquiry may be perverted to dishonorable purposes, and may be employed, in the hands of weak and envious commandants, as engines for the destruction of military merit, they shall

---

[1] *Authority and history.*—By a practice from 1847, (*a*) and renewed and firmly established during the late war, (*b*) military commissions have become adopted as authorized tribunals in this country in time of war. They are simply criminal war courts, resorted to for the reason that the jurisdiction of courts-martial, creatures as they are of statute, is restricted by law, and can not be extended to include certain classes of offenses, which, in war, would go unpunished in the absence of a provisional forum for the trial of the offenders. Their authority is derived from the Law of War, (*c*) though in some cases their powers have been added to by statute. (*d*) Their competency has been recognized not only in acts of Congress, (*e*) but in Executive proclamations, (*f*) in rulings of the courts, (*g*) and in opinions of the Attorneys-General. (*h*) During the rebellion they were employed in several thousand cases; more recently they were resorted to under the "Reconstruction" act of 1867; and still later one of these courts has been convened for the trial of Indians as offenders against the laws of war. (*i*) Dig. Opin. J. A. G., par. 1077. See also, ibid., par. 1678–1692.

---

a See Maj. Gen. Scott's G. O. 20, Hdqrs. of Army, Tampico, Feb. 19, 1847, republished, "with important additions," in G. O. 190 and 287 of the same year. In this connection, note, also, the institution by Gen. Scott of "Councils of War"—summary courts for the punishment of certain violations of the laws of war—as exibited in G. O., Hdqrs. of Army, Nos. 181, 184, and 372, of 1847, and Nos. 35 and 41, of 1848.

b The first military commission of the war is believed to have been that convened by Maj. Gen. Frémont, by G. O. 118, Western Department, St. Louis, Sept. 2, 1861.

c See G. O. 100, War Dept., 1863, Sec. I, § 13; do. 1, Dept. of the Missouri, 1862; do. 20, Hdqrs. of Army, 1847; United States *v.* Reiter, 13 Am. Law Reg., 534; State *v.* Stillman, 7 Cold., 341; Hefferman *v.* Porter, 6 do., 697. And see also Opins. At. Gen. cited under this §, *post.*

d See section 30 of the act of March 3, 1863 (12 Stat. L., 736), declaring that, in time of war, etc., murder, manslaughter, robbery, larceny, and other specified crimes, when committed by persons in the military service, shall be punishable by sentence of court-martial "or military commission," etc.—an enactment repeated, as to courts-martial, in the 58th article of war; also, section 38 of the same act (repeated in section 1343, Rev. Stat.), making spies triable by general court-martial "or military commission" and punishable with death. See, further, act of July 2, 1864, by which commanders of departments and commanding generals in the field were authorized to carry into execution sentences imposed by military commission upon guerrillas. See, also, sections 6 and 8 of the act of July 4, 1864 (13 Stat. L., 397) (not now in force), making inspectors in the quartermaster department triable and punishable by sentence of court-martial or "military commission" for fraud or neglect of duty, as also other employees and officers of that department for accepting bribes from contractors, etc.; also the reconstruction act of March 2, 1867 (14 Stat. L., 428), by which commanders of military districts were authorized to convene military commissions for the trial of certain offenders.

e See the acts cited in last note, together with sections 1199, 1343, and 1344, Rev. Stat., as also the recent appropriation acts of July 24, 1876, November 21, 1877, June 18, 1878, June 23, 1879, and May 4, 1880, in which, among other items for the Pay Department, appropriation is made "for compensation for citizen clerks and witnesses attending upon courts-martial and military commissions."

f See the proclamations of September 24, 1862, and April 2, 1866.

g Ex parte Vallandigham, 1 Wallace, 243; in the matter of Martin, 45 Barb., 146; Ex parte Bright, 1 Utah, 145; State *v.* Stillman, 7 Cold., 341. In the last case the court says: "A military commission is a tribunal now (1870) as well known and recognized in the laws of the United States as a court-martial." It has been "recognized by the executive, legislative, and judicial departments of the Government of the United States."

h See V Opins. Att. Gen., 55; XI Id., 297; XII Id., 332; XIII Id., 59; XIV Id., 249.

i The case of the Modoc Indians tried by military commission in July, 1873. G. C. M. O. 32, War Dept., 1873. See XIV Opins. Att. Gen., 249.

never be ordered by any commanding officer, except upon a demand by the officer or soldier whose conduct is to be inquired of.[1] *One hundred and fifteenth Article of War.*

Composition. 116 Art. War.

1864. A court of inquiry shall consist of one or more officers, not exceeding three, and a recorder, to reduce the proceedings and evidence to writing.[2] *One hundred and sixteenth Article of War.*

Oaths of members and recorder. 117 Art. War.

1865. The recorder of a court of inquiry shall administer to the members the following oath: "*You shall well and truly examine and inquire, according to the evidence, into*

---

[1] This article authorizes the institution of a court of inquiry (*a*) only in a case of an "officer or soldier," and the word "officer," as employed in the articles, is defined by section 1342, Revised Statutes, to mean commissioned officer. A court of inquiry can not, therefore, be convened on the application or in a case of a person who is not an officer (or soldier) of the Army at the time. Such a court can not be ordered to investigate transactions of, or charges against, a party who, by dismissal, discharge, resignation, etc., has become separated from the military service, although such transactions or charges relate altogether to his acts or conduct while in the Army. A court of inquiry can not be ordered in a case of an "acting assistant surgeon," who is not an officer of the Army, but only a civil employee. Dig. Opin. J. A. G., par. 366.

A court of inquiry should not in general be ordered by an inferior—post or regimental—commander where the charges required to be investigated are not such as an inferior court-martial could legally take cognizance of. Courts of inquiry convened by such commanders are, however, of rare occurrence in our service. Ibid., par. 367.

Though a court of inquiry has sometimes been compared to a grand jury, there is little substantial resemblance between the two bodies. The accused appears and examines witnesses before such a court as freely as before a court-martial (see article 118), and its proceedings are not required to be secret, but may be open at the discretion of the court. Ibid., par. 368.

Although neither article 88 nor other provision of the code specifically authorizes the challenging of the members of a court of inquiry, yet, in the interests of justice and by the usage of the service in this country, this proceeding is permitted in the same manner as before courts-martial. Article 117 requires that members of courts of inquiry shall be sworn "well and truly to examine and inquire, according to the evidence, without partiality, prejudice," etc.; and it is the sense of the service that their competency so to do should be liable to be tried by the same tests as in a case of a court-martial. (*b*) Ibid., par. 368, note 1.

[2] A court of inquiry has no power to punish as for a contempt. Such power of this nature as is conferred by article 86 is restricted in terms to courts-martial. Moreover, a court of inquiry, not being in a proper sense a *court*, can not exercise the strictly judicial function of punishing contempts. A loose observation of Hough (Authorities, 10), that "contempts before courts of inquiry are as much punishable as before courts-martial," has been carelessly repeated by several American writers. The recent English writer, Clode, correctly states the law (as to witnesses) in saying (Mil. and Mar. Law, 198) that a court of inquiry "has no power to punish them for contumacy or silence." The act of March 2, 1901 (G. O. 27, A. G. O., 1901), providing for the punishment of civilian witnesses refusing to appear or testify, is limited by its terms to general courts-martial.

[a] A court of inquiry is not a court in the legal sense of the term, but rather a council, commission, or board of investigation. It does not administer justice; no plea or specific issue is presented to it for trial; its proceedings are not a trial of guilt or innocence; it does not come to a verdict or pass a sentence. For purposes of investigation, however, a court of inquiry in this country is clothed with ample powers, and, in an important case, its opinions may be scarcely less significant and even final than that of a military court proper, that is to say, a court-martial. 1 Winthrop's Military Law and Precedents, chapter 24.

[b] See Macomb, sec. 204; O'Brien, 292; De Hart, 278. In the joint resolution of Congress of February 13, 1874, authorizing the President to convene a certain special court of inquiry, it was "provided that the accused may be allowed the same right of challenge as allowed by law in trials by court-martial." It appears, however, to have been regarded in the debate on this resolution (see Congressional Record, vol. 2, Nos. 38, 40) that this provision was unnecessary to entitle the party to the privilege.

the matter now before you, without partiality, favor, affection, prejudice, or hope of reward: so help you God." After which the president of the court shall administer to the recorder the following oath: "*You, A B, do swear that you will, according to your best abilities, accurately and impartially record the proceedings of the court and the evidence to be given in the case in hearing: so help you God.*" *One hundred and seventeenth Article of War.*

1866. A court of inquiry, and the recorder thereof, shall have the same power to summon and examine witnesses as is given to courts-martial and the judge-advocates thereof. Such witnesses shall take the same oath which is taken by witnesses before courts-martial,[1] and the party accused shall be permitted to examine and cross-examine them, so as fully to investigate the circumstances in question. *One hundred and eighteenth Article of War.*

Power to summon and examine witnesses.
Mar. 3, 1863, c. 75, s. 27, v. 12, p. 736; Mar. 3, 1863, c. 79, s. 25, v. 12, p. 754.
118 Art. War.

1867. A court of inquiry shall not give an opinion on the merits of the case inquired of unless specially ordered to do so.[2] *One hundred and nineteenth Article of War.*

Opinion; when given.
119 Art. War.

---

[1] So in the roll.

[2] An opinion given by a court of inquiry is not in the nature of a sentence or adjudication pronounced upon a trial. The accused, upon a subsequent trial by court-martial, of charges investigated by a court of inquiry, can not plead the proceedings or opinion of the latter as a former trial, acquittal, or conviction. Dig. Opin. J.-A. G., par. 369.

While it is of course desirable that the members of a court of inquiry, directed to express an opinion, should concur in their conclusions, they are not required to do so by law or regulation (*a*). The majority does not govern the minority, as in the case of a finding or sentence by court-martial. If a member or a minority of members can not conscientiously, and without a weak yielding of independent convictions, agree with the majority, it is better that such member or members should formally disagree and present a separate report or reports accordingly. The very disagreement, indeed, of intelligent minds is a material and important fact in the case, and one of which the reviewing authority is entitled to have the advantage in his consideration of and action upon the same. Ibid., par. 370.

Where, as in the majority of cases, the inquiry is instituted with a view of assisting the determination by the President, or a military commander, of the question whether the party should be brought to trial, the opinion of the court will properly be as to whether further proceedings before a court-martial are called for in the case, with the reasons for the conclusions reached. Where no such view enters into the inquiry, but the court is convened to investigate a question of military right, responsibility, conduct, etc., the opinion will properly confine itself to the special question proposed and its legitimate military relations. A court of inquiry, composed as it is of military men, will rarely find itself called upon to express an opinion upon questions of a purely legal character (*b*). Ibid., par. 371.

It is not irregular, but authorized, for a court of inquiry, in a proper case, to reflect, in connection with its opinion, upon any improper language or conduct of the accused, prosecuting witness, or other person appearing before it during the investigation (*c*).

---

[a] In the case of the court of inquiry (composed of seven general officers) on the Cintra Convention, in 1808, the members who dissented from the majority were required by the convening authority to put on record their opinions, and three dissenting opinions were accordingly given. A further instance, in which two of the five members of the court gave each a separate dissenting opinion, is cited by Hough (Precedents, 642). Mainly upon the authority of the former case, both Hough (Precedents, 642) and Simmons (sec. 339) hold that members nonconcurring with the majority are entitled to have their opinions reported in the record.

[b] In an exceptional case, that of the special court of inquiry authorized by Congress in the joint resolution of February 13, 1874, the court was required to express an opinion not only upon the "moral" but upon the "technical and legal responsibility" of the officer for the "offenses" charged.

[c] Thus the court of inquiry on the conduct of the Seminole war adverted, in its opinion, unfavorably upon certain offensive and reprehensible language employed against each other by the two general officers concerned, the one in his statement to the court and the other in his official communications, which were put in evidence. See G. O. 13, Headquarters of Army, 1837.

Authentication of proceedings. 120 Art. War.

1868. The proceedings of a court of inquiry must be authenticated by the signatures of the recorder and the president thereof, and delivered to the commanding officer. *One hundred and twentieth Article of War.*

Proceedings, when used as evidence. 121 Art. War.

1869. The proceedings of a court of inquiry may be admitted as evidence by a court-martial, in cases not capital, nor extending to the dismissal of an officer: *Provided*, That the circumstances are such that oral testimony can not be obtained.[1] *One hundred and twenty-first Article of War.*

---

[1] While the proceedings of a court of inquiry can not be admitted as evidence on the merits upon a trial before a court-martial of an offense for which the sentence of dismissal will be mandatory upon conviction, (*a*) yet *held* that upon the trial of such offense, as upon any other, such proceedings, properly authenticated, would be admissible in evidence for the purpose of impeaching the statements of a witness upon the trial who—it was proposed to show—had made quite different statements upon the hearing before the court of inquiry. (*b*) Dig. Opin. J. A. G., par. 372.

---

a Compare G. O., 33, Department of Arizona, 1871.

b See this ruling, published, as adopted by the President, in G. C. M. O., 40, Headquarters of Army, 1880.

CHAPTER XXXVII.

CITIZENSHIP AND NATURALIZATION.

Par.
1870. Citizenship defined.
1871. Citizenship of children of citizens born abroad.
1872. Citizenship of married women.
1873. Citizenship of persons born in Oregon.
1874. Rights of citizenship forfeited by desertion.
1875. Certain soldiers and sailors exempted from forfeitures of last section.
1876. Avoiding the draft.
1877. Right of expatriation.
1878. Protection to naturalized citizens in foreign states.
1879. Release of citizens imprisoned by foreign governments to be demanded.
1880. Naturalization of aliens.

Par.
1881. Declarations of intention, how made.
1882. Aliens honorably discharged from military service.
1883. Aliens honorably discharged from the naval service.
1884. Minor residents.
1885. Widow and children of declarants.
1886. Aliens of African nativity and descent.
1887. Residence required.
1888. Alien enemies not admitted.
1889. Children of persons naturalized.
1890. Police court of District of Columbia has no power to naturalize aliens.
1891. Naturalization of seamen.
1892. Citizenship to be accorded allottees and to Indians adopting civilized life.

CITIZENSHIP.

1870. All persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are declared to be citizens of the United States.[1]

Citizenship defined.
Apr. 9, 1866, c. 31, s. 1, v. 14, p. 27.
Sec. 1992, R.S.

1871. All children heretofore born or hereafter born out of the limits and jurisdiction of the United States, whose fathers were or may be at the time of their birth citizens thereof, are declared to be citizens of the United States; but the rights of citizenship shall not descend to children whose fathers never resided in the United States.

Citizenship of children of citizens born abroad.
Apr. 14, 1802, c. 28, s. 4, v. 2, p. 155; Feb. 10, 1855, c. 71, s. 1, v. 10, p. 604.
Sec. 1993, R.S.

1872. Any woman who is now or may hereafter be married to a citizen of the United States, and who might herself be lawfully naturalized, shall be deemed a citizen.[2]

Citizenship of married women.
Feb. 10, 1855, c. 71, s. 2, v. 10, p. 604.
Sec. 1994, R.S.

---

[1] Planters' Bank *v.* St. John, 1 Woods, 585; McKay *v.* Campbell, 2 Saw., 118.
See, also, for a definition of the term "citizen of the United States," the fourteenth amendment to the Constitution.

[2] Kelly *v.* Owen, 7 Wall, 496.

Citizenship of persons born in Oregon.
May 18, 1872, c. 172, s. 3, v. 17, p. 134.
Sec. 1995, R.S.

1873. All persons born in the district of country formerly known as the Territory of Oregon, and subject to the jurisdiction of the United States on the 18th May, 1872, are citizens in the same manner as if born elsewhere in the United States.

Rights of citizenship forfeited for desertion, etc.
Mar. 3, 1865, c. 79, s. 21, v. 13, p. 490.
Sec. 1996, R.S.

1874. All persons who deserted the military or naval service of the United States and did not return thereto or report themselves to a provost-marshal within sixty days after the issuance of the proclamation by the President, dated the 11th day of March, 1865, are deemed to have voluntarily relinquished and forfeited their rights of citizenship, as well as their right to become citizens; and such deserters shall be forever incapable of holding any office of trust or profit under the United States, or of exercising any rights of citizens thereof.[1]

Certain soldiers and sailors exempted from the forfeitures of the last section.
July 19, 1867, c. 28, v. 15, p. 14.
Sec. 1997, R.S.

1875. No soldier or sailor, however, who faithfully served according to his enlistment until the 19th day of April, 1865, and who, without proper authority or leave first obtained, quit his command or refused to serve after that date, shall be held to be a deserter from the Army or Navy; but this section shall be construed solely as a removal of any disability such soldier or sailor may have incurred, under the preceding section, by the loss of citizenship and of the right to hold office, in consequence of his desertion.

Avoiding the draft.
Mar. 3, 1865, c. 79, s. 21, v. 13, p. 490.
Sec. 1998, R.S.

1876. Every person who hereafter deserts the military or naval service of the United States, or who, being duly enrolled, departs the jurisdiction of the district in which he is enrolled, or goes beyond the limits of the United States, with intent to avoid any draft into the military or naval service, lawfully ordered, shall be liable to all the penalties and forfeitures of section nineteen hundred and ninety-six.[1]

Right of expatriation.
July 27, 1868, c. 249, s. 1, v. 15, p. 223.
Sec. 1999, R.S.

1877. Whereas the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness; and whereas in the recognition of this principle this Government has freely received emigrants from all nations, and invested them with the rights of citizenship; and whereas it is claimed that such American citizens, with their descendants, are subjects of foreign states, owing allegiance to the governments thereof; and whereas it is necessary to the maintenance of public peace that this claim of foreign allegiance should be promptly and finally disavowed: Therefore any declaration, instruction, opinion, order, or decision of any officer of the United States which denies, restricts, impairs, or questions the right of expatriation is declared inconsistent with the fundamental principles of the Republic.

---

[1] These penalties only take effect upon conviction by court-martial. Kurtz *v.* Moffett, 115 U. S., 501.

1878. All naturalized citizens of the United States, while in foreign countries, are entitled to and shall receive from this Government the same protection of persons and property which is accorded to native-born citizens.

Protection to naturalized citizens in foreign states.
July 27, 1868, c. 249, s. 2, v. 15, p. 224.
Sec. 2000, R. S.

1879. Whenever it is made known to the President that any citizen of the United States has been unjustly deprived of his liberty by or under the authority of any foreign government, it shall be the duty of the President forthwith to demand of that government the reasons of such imprisonment; and if it appears to be wrongful and in violation of the rights of American citizenship, the President shall forthwith demand the release of such citizen, and if the release so demanded is unreasonably delayed or refused, the President shall use such means, not amounting to acts of war, as he may think necessary and proper to obtain or effectuate the release; and all the facts and proceedings relative thereto shall as soon as practicable be communicated by the President to Congress.

Release of citizens imprisoned by foreign governments to be demanded.
July 27, 1868, c. 249, s. 3, v. 15, p. 224.
Sec. 2001, R. S.

NATURALIZATION.[1]

1880. An alien may be admitted to become a citizen of the United States in the following manner, and not otherwise:

Naturalization of aliens.
Sec. 2165, R. S.

First. He shall declare on oath, before a circuit or district court of the United States, or a district or supreme court of the Territories, or a court of record of any of the States having common-law jurisdiction, and a seal and clerk, two years, at least, prior to his admission, that it is bona fide his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and, particularly, by name, to the prince, potentate, state, or sovereignty of which the alien may be at the time a citizen or subject.

Declaration of intention.
Apr. 14, 1802, c. 28, ss. 1, 3, v. 2, pp. 153, 155; May 26, 1824, c. 186, s. 4, v. 4, p. 69; Feb. 1, 1876, c. 5, v. 19, p. 2.

---

[1] The power of naturalization is exclusively in Congress. Chirac *v.* Chirac, 2 Wheat., 260. Jurisdiction for that purpose having been conferred by Congress, courts of record in the several States and Territories have the power to extend the privileges of citizenship to aliens by an application of the provisions of the naturalization laws of the United States. Campbell *v.* Gordon, 6 Cr., 176; Stark *v.* Chesapeake Ins. Co., 7 Cr., 420; Chirac *v.* Chirac, 2 Wheat., 259; Osborn *v.* United States Bank, 9 Wheat., 827; Spratt *v.* Spratt, 4 Pet., 393.

For a discussion of the power of the several States to confer the privilege of *State* citizenship upon aliens, see Collet *v.* Collet (2 Dall., 294).

Oath to support the Constitution of the United States. Apr. 14, 1802, c. 28, s. 1, v. 2. p. 153.

Second. He shall, at the time of his application to be admitted, declare, on oath, before some one of the courts above specified, that he will support the Constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to every foreign prince, potentate, state, or sovereignty; and, particularly, by name, to the prince, potentate, state, or sovereignty of which he was before a citizen or subject; which proceedings shall be recorded by the clerk of the court.

Residence in United States or States, and good moral character.

Third. It shall be made to appear to the satisfaction of the court admitting such alien that he has resided within the United States five years at least, and within the State or Territory where such court is at the time held, one year at least; and that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same; but the oath of the applicant shall in no case be allowed to prove his residence.[1]

Titles of nobility to be renounced.

Fourth. In case the alien applying to be admitted to citizenship has borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility in the court to which his application is made, and his renunciation shall be recorded in the court.

Persons residing in the United States before Jan. 29, 1795.

Fifth. Any alien who was residing within the limits and under the jurisdiction of the United States before the twenty-ninth day of January, one thousand seven hundred and ninety-five, may be admitted to become a citizen, on due proof made to some one of the courts above specified, that he has resided two years, at least, within the jurisdiction of the United States, and one year, at least, immediately preceding his appliction, within the State or Territory where such court is at the time held; and on his declaring on oath that he will support the Constitution of the United States, and that he absolutely and entirely renounces and abjures all allegience and fidelity to any foreign prince, potentate, state, or sovereignty, and, particularly, by name, to the prince, potentate, state, or sovereignty whereof he was before a citizen or subject; and, also, on its appearing to the satisfaction of the court, that during such term of two years he has behaved as a man of good moral character, attached to the Constitution of the United States, and well disposed to the good order and happiness of the same; and where the alien, applying for admission to citizenship, has borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, on his, moreover, making in the court an express renunciation of his title or order of nobility. All of the proceedings, required in this condition to be performed in the court, shall be recorded by the clerk thereof.

---

[1] By the treaty of cession with Russia subjects of that nation inhabiting the Territory of Alaska at the date of the treaty, and continuing to remain such inhabitants for three years, became thereupon American citizens. But the treaty neither mentions nor refers to British subjects or the subjects of any foreign nation other than Russia. Such persons, therefore, residing in the Territory, can become citizens only in the mode and form prescribed by the United States naturalization laws. Dig. Opin. J. A. Gen., par. 400.

Persons residing between June 18, 1798, and June 18, 1812.

Mar. 22, 1816, c. 31, s. 2, v. 3, p. 259, May 24, 1828, c. 116, s. 2, v. 4, p. 310.

Sixth. Any alien who was residing within the limits and under the jurisdiction of the United States, between the eighteenth day of June, one thousand seven hundred and ninety-eight, and the eighteenth day of June, one thousand eight hundred and twelve, and who has continued to reside within the same, may be admitted to become a citizen of the United States without having made any previous declaration of his intention to become such; but whenever any person, without a certificate of such declaration of intention, makes application to be admitted a citizen, it must be proved to the satisfaction of the court that the applicant was residing within the limits and under the jurisdiction of the United States before the eighteenth day of June, one thousand eight hundred and twelve, and has continued to reside within the same; and the residence of the applicant within the limits and under the jurisdiction of the United States, for at least five years immediately preceding the time of such application, must be proved by the oath of citizens of the United States, which citizens shall be named in the record as witnesses; and such continued residence within the limits and under the jurisdiction of the United States, when satisfactorily proved, and the place where the applicant has resided for at least five years shall be stated and set forth, together with the names of such citizens, in the record of the court admitting the applicant; otherwise the same shall not entitle him to be considered and deemed a citizen of the United States.

Declaration of intention, how made.

Feb. 1, 1876, c. 5, v. 19, p. 2.

Sec. 2165, R.S.

1881. That the declaration of intention to become a citizen of the United States, required by section two thousand one hundred and sixty-five of the Revised Statutes of the United States, may be made by an alien before the clerk of any of the courts named in said section two thousand one hundred and sixty-five; and all such declarations heretofore made before any such clerk are hereby declared as legal and valid as if made before one of the courts named in said section.

Aliens honorably discharged from military service.
July 17, 1862, c. 200, s. 21, v. 12, p. 597.
Sec. 2166, R.S.

1882. Any alien of the age of twenty-one years and upward, who has enlisted, or may enlist, in the armies of the United States, either the regular or volunteer forces, and has been, or may be hereafter, honorably discharged, shall be admitted to become a citizen of the United States, upon his petition, without any previous declaration of his intention to become such; and he shall not be required to prove more than one year's residence within the United States previous to his application to become such citizen; and the court admitting such alien shall, in addition to such proof of residence and good moral character, as now provided by law, be satisfied by competent proof of such person's having been honorably discharged from the service of the United States.[1]

Aliens honorably discharged from the naval service.
July 26, 1894, v. 28, p. 124.

1883. Any alien of the age of twenty-one years and upward who has enlisted or may enlist in the United States Navy or Marine Corps, and has served or may hereafter serve five consecutive years in the United States Navy or one enlistment in the United States Marine Corps, and has been or may hereafter be honorably discharged, shall be admitted to become a citizen of the United States upon his petition, without any previous declaration of his intention to become such; and the court admitting such alien shall, in addition to proof of good moral character, be satisfied by competent proof of such person's service in and honorable discharge from the United States Navy or Marine Corps. *Act of July 26, 1894* (*28 Stat. L.*, *124*).

---

[1] Aliens, honorably discharged after enlisting in our Army, are not, by such discharge alone, made citizens, but they are thereupon entitled (under a provision of the act of July 17, 1862, now section 2166, Revised Statutes) to be admitted to become citizens without previous declaration of intention, upon merely presenting to the proper court (see section 2165, Revised Statutes) a petition for the purpose, accompanied by proof of at least one year's residence within the United States previous to the application, of good moral character, and of the fact of honorable discharge. Dig. Opin. J. A. G., par. 401.

Under the act of July 30, 1892, an enlisted man, to be eligible for promotion as commissioned officer, must be a citizen of the United States. And, in order to be promptly naturalized, under section 2166, Revised Statutes, he must first be honorably discharged. So, *advised* that such alien, to be qualified for examination and appointment under the act, should be discharged and, after naturalization, be reenlisted. Ibid., par. 403.

The mere enlistment and honorable discharge of an alien as a soldier of our Army do not *per se* constitute him a citizen of the United States. He must still make formal petition to one of the courts, etc., specified in section 2165, Revised Statutes, and present thereupon the evidence required by section 2166. Ibid., par. 736.

A native-born minor is a citizen of the United States under the fourteenth amendment of the Constitution. Ibid., par. 737.

Minor residents.
May 26, 1824, c. 186, s. 1, v. 4, p. 69.
Sec. 2167, R.S.

1884. Any alien, being under the age of twenty-one years, who has resided in the United States three years next preceding his arriving at that age, and who has continued to reside therein to the time he may make application to be admitted a citizen thereof, may, after he arrives at the age of twenty-one years, and after he has resided five years within the United States, including the three years of his minority, be admitted a citizen of the United States, without having made the declaration required in the first condition of section twenty-one hundred and sixty-five; but such alien shall make the declaration required therein at the time of his admission; and shall further declare, on oath, and prove to the satisfaction of the court, that, for two years next preceding, it has been his bona fide intention to become a citizen of the United States; and he shall in all other respects comply with the laws in regard to naturalization.

Widow and children of declarants.
Mar. 26, 1804, c. 47, s. 2, v. 2, p. 293.
Sec. 2168, R.S.

1885. When any alien, who has complied with the first condition specified in section twenty-one hundred and sixty-five, dies before he is actually naturalized, the widow and the children of such alien shall be considered as citizens of the United States, and shall be entitled to all rights and privileges as such, upon taking the oaths prescribed[1] by law.

Aliens of African nativity and descent.
July 14, 1870, c. 254, s. 7, v. 16, p. 256; Feb. 18, 1875, c. 80, v. 18, p. 318.
Sec. 2169, R.S.

1886. The provisions of this Title[2] shall apply to aliens [being free white persons, and to aliens] of African nativity and to persons of African descent.

Residence required.
Mar. 3, 1813, c. 42, s. 12, v. 2, p. 811.
Sec. 2170, R.S.

1887. No alien shall be admitted to become a citizen who has not for the continued term of five years next preceding his admission resided within the United States.

Alien enemies not admitted.
Apr. 14, 1802, c. 28, s. 1, v. 2, p. 153; July 30, 1813, c. 36, v. 3, p. 53.
Sec. 2171, R.S.

1888. No alien who is a native citizen or subject, or a denizen of any country, state, or sovereignty with which the United States are at war, at the time of his application, shall be then admitted to become a citizen of the United States; but persons resident within the United States, or the Territories thereof, on the eighteenth day of June, in the year one thousand eight hundred and twelve, who had before that day made a declaration, according to law, of their intention to become citizens of the United States, or who were on that day entitled to become citizens without making such declaration, may be admitted to become citizens thereof, notwithstanding they were alien enemies at the time and in the manner prescribed by the laws heretofore passed on that subject; nor shall anything herein contained be taken or construed to interfere with or prevent the apprehension and removal, agreeably to law, of any alien enemy at any time previous to the actual naturalization of such alien.

---

[1] Error in the roll; should be *prescribed.*

[2] Title XXX, Revised Statutes; paragraphs 454–480 of this work.

Citizenship of children of persons naturalized. Apr. 14, 1802, c. 28, s. 4, v. 2, p. 155. Campbell *v.* Gordon, 6 Cr., 176; U.S. *v.* Hirshfield, 13 Blatch., 330. **Sec. 2172, R.S.**

1889. The children of persons who have been duly naturalized under any law of the United States, or who, previous to the passing of any law on that subject, by the Government of the United States, may have become citizens of any one of the States, under the laws thereof, being under the age of twenty-one years at the time of the naturalization of their parents, shall, if dwelling in the United States, be considered as citizens thereof; and the children of persons who now are, or have been, citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens thereof; but no person heretofore proscribed by any State, or who has been legally convicted of having joined the army of Great Britain during the Revolutionary war, shall be admitted to become a citizen without the consent of the legislature of the State in which such person was proscribed.

Police court of District of Columbia has no power to naturalize aliens. **Sec. 2173, R.S.**

1890. The police court of the District of Columbia shall have no power to naturalize foreigners.

June 17, 1870, c. 133, s. 5, v. 16, p. 154.

Naturalization of seamen. June 7, 1872, c. 322, s. 29, v. 17, p. 268. **Sec. 2174, R.S.**

1891. Every seaman, being a foreigner, who declares his intention of becoming a citizen of the United States in any competent court, and shall have served three years on board of a merchant vessel of the United States subsequent to the date of such declaration, may, on his application to any competent court, and the production of his certificate of discharge and good conduct during that time, together with the certificate of his declaration of intention to become a citizen, be admitted a citizen of the United States; and every seaman, being a foreigner, shall, after his declaration of intention to become a citizen of the United States, and after he shall have served such three years, be deemed a citizen of the United States for the purpose of manning and serving on board any merchant vessel of the United States, anything to the contrary in any act of Congress notwithstanding; but such seaman shall, for all purposes of protection as an American citizen, be deemed such, after the filing of his declaration of intention to become such citizen.[1]

---

[1] For statutory provisions respecting seamen in the naval service of the United States, see paragraph 1883, *ante*.

Citizenship to be accorded to allottees and Indians adopting civilized life. Sec. 6, Feb. 8, 1887, v. 24, p. 390.

1892. That upon the completion of said allotments and the patenting of the lands to said allottees, each and every member of the respective bands or tribes of Indians to whom allotments have been made shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside; and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law. And every Indian born within the territorial limits of the United States to whom allotments shall have been made under the provisions of this act, or under any law or treaty, and every Indian born within the territorial limits of the United States who has voluntarily taken up, within said limits, his residence separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges, and immunities of such citizens, whether said Indian has been or not, by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States without in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property.[1] *Sec. 6, act of February 8, 1887 (24 Stat. L., 390).*

---

[1] For the Indian allotment act, see the act of February 8, 1887 (24 Stat. L., 358–390).

CHAPTER XXXVIII.

THE INDIANS.

INDIAN AGENTS—INDIAN RESERVATIONS—THE INDIAN COUNTRY.

Par.
1893–1895. The Secretary of the Interior; the Commissioner of Indian Affairs.
1896–1921. Indian inspectors and Indian agents; agencies.
1922–1940. Performance of engagements with Indians; annuities.
1941–1959. Government and protection of Indians.
1960–1974. Indian traders.
1975–1985. Sales of liquor to Indians.
1986–2010. Crimes and criminal offenses.
2011–2014. The Indian police.

THE SECRETARY OF THE INTERIOR—THE COMMISSIONER OF INDIAN AFFAIRS.

Par.
1893. Secretary of the Interior; duties.
1894. Commissioner of Indian Affairs; duties.
1895. Commissioner of Indian Affairs to cause laws relating to Indian service to be compiled for use of agents, etc.

Duties. Mar. 3, 1849, s. 5, v. 9, p. 395. Sec. 441, R. S.

1893. The Secretary of the Interior is charged with the supervision of public business relating to the following subjects:

* * * * *

Third. The Indians. *Sec. 5, act of March 3, 1849* (*9 Stat. L., 395*).

July 9, 1832, s. 4, v. 4, p. 564. Sec. 463, R. S.

1894. The Commissioner of Indian Affairs shall, under the direction of the Secretary of the Interior, and agreeably to such regulations as the President may prescribe, have the management of all Indian affairs and of all matters arising out of Indian relations.

Laws to be compiled for use of agents, etc. May 17, 1882, s. 7, v. 22, p. 88.

1895. It shall be the duty of the Commissioner of Indian Affairs to cause to be compiled and printed for the use of Indian agents and inspectors the provisions of the statutes regulating the performance of their respective duties, and also to furnish said officers, from time to time, information of new enactments upon the same subject. *Sec. 7, act of May 17, 1882* (*22 Stat. L., 88*).

INDIAN INSPECTORS AND INDIAN AGENTS.

Par.
1896. Indian inspectors; appointment.
1897. Powers and duties.
1898. Indian agents.
1899. Tenure of office.
1900. Bonds.
1901. Limits of agency, etc.
1902. Residence of agents.
1903–1904. Army officers as agents.
1905. Restriction on agents' compensation.
1906. Special agents, etc.; appointment.
1907. Sub-Indian agents.
1908. Superintendents of manual training schools to act as agents.
Par.
1909. Administration of oaths.
1910. Acknowledgments.
1911. Investigations; oaths to witnesses.
1912. Restrictions on officeholding.
1913. Compensations to be in full.
1914. Traveling expenses.
1915. Additional security.
1916. Discontinuance of agencies.
1917. Consolidation of agencies.
1918–1919. Transfer of agencies.
1920. Discharge of employees.
1921. Duties of Indian agents.

1896. There shall be appointed by the President, by and with the advice and consent of the Senate, a sufficient number of Indian inspectors, not exceeding five[1] in number, to perform the duties required of such inspectors by the provisions of this title. Each inspector shall hold his office for four years, unless sooner removed by the President.

Indian inspectors; term of office.
Feb. 14, 1873, c. 138, s. 6, v. 17, p. 463; Mar. 3, 1875, c. 132, v. 18, p. 422.
Sec. 2043, R.S.

1897. Each Indian superintendency and agency shall be visited and examined as often as twice a year[2] by one or more of the inspectors. Such examination shall extend to a full investigation of all matters pertaining to the business of the superintendency or agency, including an examination of accounts, the manner of expending money, the number of Indians provided for, contracts of all kinds connected with the business, the condition of the Indians, their advancement in civilization, the extent of the reservations, and what use is made of the lands set apart for that purpose, and, generally, all matters pertaining to the Indian service. For the purpose of making such investigations, each inspector shall have power to examine all books, papers, and vouchers, to administer oaths, and to examine on oath all officers and persons employed in the superintendency or agency, and all such other persons as he may deem necessary or proper. The inspectors, or any of them, shall have power to suspend any superintendent or agent or employee, and to designate some person in his

Powers and duties of inspectors.
Ibid.
Mar. 3, 1875, c. 132, ss. 1, 4, 5, v. 18, pp. 422, 449.
Sec. 2045, R.S.

---

[1] The act of May 31, 1900 (31 Stat. L., 224), makes provision for eight Indian inspectors, one of whom shall be an engineer competent to the location, construction, and maintenance of irrigation works.

[2] The act of March 3, 1875 (18 Stat. L., 422), repealed the above requirement in respect to semiannual examinations by inspectors.

place temporarily, subject to the approval of the President, making immediate report of such suspension and designation; and upon the conclusion of each examination a report shall be forwarded to the President without delay. The inspectors, in the discharge of their duties, jointly and individually, shall have power, by proper legal proceedings, which it shall be the duty of the district attorney of the United States for the appropriate district duly to effectuate, to enforce the laws and to prevent the violation of law in the administration of affairs in the several agencies and superintendencies. So far as practicable, the examinations of the agencies and superintendencies shall be made alternately by different inspectors, so that the same agency or superintendency may not be examined twice in succession by the same inspector or inspectors.

Indian agents.
Feb. 14, 1873, c. 138, s. 1, v. 17, p. 437; June 22, 1874, c. 389, v. 18, p. 147.
Sec. 2052, R.S.

1898. The President is authorized to appoint from time to time, by and with the advice and consent of the Senate, the following Indian agents:[1]

Term of office.
Feb. 27, 1851, c. 14, s. 6, v. 9, p. 587; Apr. 8, 1864, c. 48, s. 4, v. 13, p. 40.
Sec. 2056, R.S.

1899. Each Indian agent shall hold his office for the term of four years [and until his successor is duly appointed and qualified].[2]

Bonds.
Feb. 27, 1851, c. 14, s. 6, v. 9, p. 587; Mar. 3, 1875, c. 132, s. 10, v. 18, p. 451.
Sec. 2057, R.S.

1900. Each Indian agent, before entering upon the duties of his office, shall give bond in such penalties and with such security as the President or the Secretary of the Interior may require.[3]

Limits of superintendencies, agencies, and subagencies.

1901. The limits of each superintendency, agency, and subagency shall be established by the Secretary of the Interior, either by tribes or geographical boundaries.

June 30, 1834, c. 162, s. 7, v. 4, p. 736; Mar. 3, 1847, c. 66, s. 1, v. 9, p. 203. **Sec. 2066, R.S.**

Residence of Indian agents.
Ibid.
Sec. 2060, R.S.

1902. Every Indian agent shall reside and keep his agency within or near the territory of the tribe for which he may be agent, and at such place as the President may designate, and shall not depart from the limits of his agency without permission.

---

[1] The act of August 15, 1894 (28 Stat. L., 286), contained the following requirement: "Hereafter the annual salaries of the several Indian agents shall be as provided for in this act." (*a*) This legislation operated as an express repeal of the provisions of section 2057, Revised Statutes, *in pari materia.* The number of Indian agents and their respective salaries are now fixed in the annual acts of appropriation for the support of the Indian service. That for March 3, 1901 (31 Stat. L. 1058), makes provision for forty-nine Indian agents at an aggregate expense of $77,600.

[2] Amended by the insertion of the words in brackets by the act of May 17, 1882 (22 Stat. L., 87).

[3] For statute authorizing additional security to be required in certain cases see paragraph 1915, *post.*

---

a The act of July 4, 1884 (23 Stat. L., 76), contained a provision repealing all statutes fixing compensation of Indian agents in excess of the amounts therein appropriated. For a list of agencies, with the salaries thereto pertaining, as fixed by the act of August 15, 1884 (28 Stat. L., 286), see Vol. II, Supplement to the Revised Statutes, page 244, note 2.

Officers of the Army may be required to act as Indian agents.
June 30, 1834, c. 162, ss. 4, 12, v. 4, pp. 735–737.
Sec. 2062, R.S.

1903. The President may require any military officer of the United States to execute the duties of an Indian agent; and when such duties are required of any military officer, he shall perform the same without any other compensation than his actual traveling expenses.[1]

The same.
July 1, 1898, v. 30, p. 573.

1904. Hereafter the President may detail officers of the United States Army to act as Indian agents at such agencies as, in the opinion of the President, may require the presence of an army officer, and while acting as Indian agents such officers shall be under the orders and direction of the Secretary of the Interior.[2] *Act of July 1, 1898* (*30 Stat. L.*, *573*).

Compensation for extra services.
May 31, 1832, c. 109, s. 2, v. 4, p. 520.
Sec. 2063, R.S.

1905. No compensation beyond their actual expenses for extra services shall be allowed any Indian agent or subagent for services when doing duty under the order of the Government, detached from their agency and the boundary of the tribe to which they are agents or subagents.

Special agents and commissioners.
Mar. 3, 1863, c. 99, s. 1, v. 12, p. 792.
Sec. 2067, R.S.

1906. All special agents and commissioners not appointed by the President shall be appointed by the Secretary of the Interior.

Appointment of sub-Indian agents.
June 30, 1834, c. 162, s. 5, v. 4, p. 736.
Sec. 2055, R.S.

1907. A competent number of sub-Indian agents shall be appointed by the President, with a salary of one thousand dollars a year each, to be employed, and to reside wherever the President may direct, and who shall give bonds, with one or more sureties, in the penal sum of one thousand dollars, for the faithful execution of their duties. But no subagent shall be appointed who shall reside within the limits of any agency where there is an agent appointed.

Superintendent of training school to act as agent.

1908. The Commissioner of Indian Affairs, with the approval of the Secretary of the Interior, may devolve the duties of any Indian agency upon the superintendent of the Indian training school located at such agency, whenever in his judgment such superintendent can properly perform the duties of such agency. And the superintendent upon whom such duties devolve shall give bond as other Indian agents.[3] *Act of March 3, 1899* (*30 Stat. L.*, *924*.)

Bond.
Mar. 3, 1899, v. 30, p. 924.

---

[1] Officers of the Army acting as Indian agents at places where there are suitable quarters provided by the Government are not entitled to commutation of quarters. IV Compt. Dec., 212; III, ibid., 223.

[2] The acts of July 1, 1898 (30 Stat. L., 573), March 2, 1899 (ibid., 926), and May 31, 1900 (31 ibid., 224), have contained the requirement that the sums appropriated for compensation of Indian agents "shall not take effect or become available in any case for or during the time in which any officer of the Army of the United States shall be engaged in the performance of the duties of Indian agent at any of the agencies" named therein.

[3] The act of June 10, 1896 (29 Stat. L., 321), contained the same requirement.

Oaths in pension cases.
July 26, 1892, s. 2, v. 27, p. 272.

1909. Declaration in (pension) claims of Indians may be made before a United States Indian agent. *Sec. 2, act of July 26, 1892 (27 Stat. L., 272).*

Acknowledgment of deeds, etc., by agents.
Mar. 3, 1855, c. 204, s. 10, v. 10, p. 701.
Sec. 2064, R. S.

1910. Indian agents are authorized to take acknowledgments of deeds and other instruments of writing, and to administer oaths in investigations committed to them in Indian country, pursuant to such rules and regulations as may be prescribed for that purpose by the Secretary of the Interior; and acknowledgments so taken shall have the same effect as if taken before a justice of the peace.

Administration of oaths.
Mar. 1, 1899, v. 30, p. 924.

1911. Hereafter each special agent, supervisor of schools, or other official charged with the investigation of Indian agencies and schools, in the pursuit of his official duties, shall have power to administer oaths and to examine, on oath, all officers and persons employed in the Indian service, and all such other persons as may be deemed necessary and proper. *Act of March 1, 1899 (30 Stat. L., 924).*

MISCELLANEOUS.

No person to hold two offices; leave of absence.
June 30, 1834, c. 162, s. 10, v. 4, p. 737.
Sec. 2074, R. S.

1912. No person shall hold more than one office at the same time under this Title;[1] nor shall any agent, subagent, interpreter, or person employed under this Title, receive his salary while absent from his agency or employment without leave of the superintendent or Secretary of the Interior; but such absence shall at no time exceed sixty days.

Compensation prescribed to be in full.
June 30, 1834, c. 162, s. 10, v. 4, p. 737.
Sec. 2076, R. S.

1913. The several compensations prescribed by this Title[1] shall be in full of all emoluments or allowances whatsoever. But, where necessary, a reasonable allowance or provision may be made for offices and office contingencies.

Allowance for traveling expenses.
June 30, 1834, c. 162, s. 10, v. 4, p. 737.
Minis *v.* U. S., 15 Pet., 423.
Sec. 2077, R. S.

1914. Where persons are required, in the performance of their duties, under this Title,[1] to travel from one place to another, their actual expenses, or a reasonable sum in lieu thereof, may be allowed them, except that no allowance shall be made to any person for travel or expenses in coming to the seat of Government to settle his accounts, unless thereto required by the Secretary of the Interior.

Additional security from disbursing officers, etc.
June 30, 1834, c. 162, s. 8, v. 4, p. 737.
Sec. 2075, R. S.

1915. The President may, from time to time, require additional security, and in larger amounts, from all persons charged or trusted, under the laws of the United States, with the disbursement or application of money, goods, or effects of any kind, on account of Indian affairs.

---

[1] Title XXVIII, Revised Statutes.

DISCONTINUANCE OF AGENCIES.

1916. It shall be the duty of the President to dispense with the services of such Indian agents and superintendents as may be practicable; and where it is practicable he shall require the same person to perform the duties of two agencies or superintendencies for one salary.

Services of certain agents, etc., to be dispensed with.
Ibid., p. 438.
June 22, 1874, c. 389, v. 18, p. 147; June 22, 1874, c. 289, v. 18, p. 177.
Sec. 2053, R. S.

1917. The President may, in his discretion, consolidate two or more agencies into one, and where Indians are located on reservations created by executive order, he may, with the consent of the tribes to be affected thereby, expressed in the usual manner, consolidate one or more tribes, and abolish such agencies as are thereby rendered unnecessary; and preference shall at all times, as far as practicable, be given to Indians in the employment of clerical, mechanical, and other help on reservations and about agencies. *Sec. 6, act of March 1, 1883 (22 Stat. L., 451).*

Consolidation of agencies, etc.
March 1, 1883, s. 6, v. 22, p. 451.

1918. The President shall, whenever he may judge it expedient, discontinue any Indian agency, or transfer the same, from the place or tribe designated by law, to such other place or tribe as the public service may require.

Discontinuance and transfer of agencies.
June 30, 1834, c. 162, s. 4, v. 4, p. 735.
Sec. 2059, R. S.

1919. Whenever any one or more of the superintendencies is abolished by law, or discontinued by the President, the Indian agents in such superintendencies shall report directly to the Commissioner of Indian Affairs.

The same.
July 15, 1870, c. 296, s. 6, v. 16, p. 360.
Sec. 2054, R. S.

1920. The Secretary of the Interior shall, under the direction of the President, cause to be discontinued the services of such [agents] subagents, interpreters, and mechanics, as may from time to time become unnecessary, in consequence of the [*immigration*] [emigration] of the Indians, or other causes.

Discontinuance of the offices of subagents, interpreters, etc.
July 9, 1832, c. 174, s. 5, v. 4, p. 564; Feb. 27, 1877, c. 69, v. 19, p. 244.
Sec. 2073, R. S.

DUTIES OF INDIAN AGENTS.

1921. Each Indian agent shall, within his agency, manage and superintend the intercourse with the Indians, agreeably to law; and execute and perform such regulations and duties, not inconsistent with law, as may be prescribed by the President, the Secretary of the Interior, the Commissioner of Indian Affairs, or the Superintendent of Indian Affairs.[1]

Duties.
June 30, 1834, c. 162, s. 7, v. 4, p. 736; June 5, 1850, c. 16, s. 4, v. 9, p. 736, Feb. 27, 1851, c. 14, s. 5, v. 9, p. 587; Mar. 3, 1875, c. 132, ss. 4, 5, 10, v. 18, pp. 449, 451.
Sec. 2058, R. S.

---

[1] For statutes imposing other duties upon Indian agents see section 9, act of July 4, 1884 (23 Stat. L., 98), requiring a census to be taken. See, also, the annual acts of appropriation. For the statute establishing the Indian police see the act of May 27, 1878 (20 Stat. L., 86), paragraphs 2011–2014, *post.*

PERFORMANCE OF ENGAGEMENTS WITH INDIANS.

Par.
1922. No treaties to be made in future.
1923. Abrogation of treaties.
1924. Payment of certain annuities in coin.
1925. Payment of annuities in goods.
1926. Purchases of goods for Indians.
1927. Methods of purchase.
1928. Claims for supplies.
1929. Payment of annuities.
1930. Withholding annuities.

Par.
1931. Army officer to be present at issues.
1932, 1933. Mode of distribution.
1934. Reports of issues; number present.
1935. No annuities to hostile Indians.
1936. No annuities to Indians who have violated treaties.
1937. Annuities to minors.
1938. No annuities to Indians holding captives.
1939, 1940. Sale of buildings.

No future treaties with Indian tribes.
Mar. 3, 1871, c. 120, s. 1, v. 16, p. 566; June 22, 1874, c. 389, s. 3, v. 18, p. 176; June 10, 1876, c. 122, v. 19, p. 58.
Sec. 2079, R.S.

1922. No Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty; but no obligation of any treaty lawfully made and ratified with any such Indian nation or tribe prior to March third, eighteen hundred and seventy-one, thall be hereby invalidated or impaired.

Abrogation of treaties.
July 5, 1862, c. 135, s. 1, v. 12, p. 528.
Sec. 2080, R.S.

1923. Whenever the tribal organization of any Indian tribe is in actual hostility to the United States, the President is authorized, by proclamation, to declare all treaties with such tribe abrogated by such tribe, if in his opinion the same can be done consistently with good faith and legal and national obligations.[1]

Payment of certain annuities in coin.
Mar. 3, 1865, c. 127, s. 3, v. 13, p. 561.
Sec. 2081, R.S.

1924. The Secretary of the Treasury is authorized to pay in coin such of the annuities as by the terms of any treaty of the United States with any Indian tribe are required to be paid in coin.

Payment of annuities in goods.
June 30, 1834, c. 162, s. 12, v. 4, p. 737.
Sec. 2082, R.S.

1925. The President may, at the request of any Indian tribe, to which any annuity is payable in money, cause the same to be paid in goods, purchased as provided in the next section.

Purchase of goods for the Indians.
June 30, 1834, c. 162, s. 13, v. 4, p. 737; June 22, 1874, c. 389, v. 18, p. 176; Mar. 3, 1875, c. 132, s. 7, v. 18, p. 450; Aug. 15, 1876, c. 289, v. 19, p. 196.
Sec. 2083, R.S.

1926. All merchandise required by any Indian treaty for the Indians, payable after making of such treaty, shall be purchased under the direction of the Secretary of the Interior, upon proposals to be received, to be based on notices previously to be given; and all merchandise required at the making of any Indian treaty shall be purchased under the order of the Commissioner of Indian Affairs by such person as he shall appoint. All other purchases on account of the Indians, and all payments to them of money or goods, shall be made by such person as the President shall designate for that purpose.

---

[1] Section 2 of the act of March 2, 1875 (18 Stat. L., 449), contains the requirement that no money appropriated for the Indian service shall be paid to any band of Indians while said band, or any part thereof, is at war with the United States.

Manner of purchase.
July 5, 1862, c. 135, s. 5, v. 12, p. 529.
Sec. 2084, R. S.

1927. No goods shall be purchased by the Office of Indian Affairs, or its agents, for any tribe, except upon the written requisition of the superintendent in charge of the tribe, and only upon public bids in the mode prescribed by the preceding section.

Claims for supplies.
July 15, 1870, c. 296, s. 2, v. 16, p. 360.
Sec. 2085, R. S,

1928. No claims for supplies for Indians, purchased without authority of law, shall be paid out of any appropriation for expenses of the Office of Indian Affairs, or for Indians.

Modes of paying annuities and distributing goods.
June 30, 1834, c. 162, s. 11, v. 4, p. 737; Mar. 3, 1847, c. 66, s. 3, v. 9, p. 203; Aug. 30, 1852, c. 103, s. 3, v. 10, p. 56; July 15, 1870, c. 296, ss. 2, 3, v. 16, p. 360; Mar. 3, 1875, c. 132, s. 6, v. 18, p. 450; Aug. 15, 1876, c. 289, v. 19, p. 196.
Sec. 2086, R. S.

1929. The payment of all moneys and the distribution of all goods stipulated to be furnished to any Indians, or tribe of Indians, shall be made in one of the following ways, as the President or the Secretary of the Interior may direct:

First. To the chiefs of a tribe, for the tribe.

Second. In cases where the imperious interest of the tribe or the individuals intended to be benefited, or any treaty stipulation, requires the intervention of an agency, then to such person as the tribe shall appoint to receive such moneys or goods; or if several persons be appointed, then upon the joint order or receipt of such persons.

Third. To the heads of the families and to the individuals entitled to participate in the moneys or goods.

Fourth. By consent of the tribe, such moneys or goods may be applied directly, under such regulations, not inconsistent with treaty stipulations, as may be prescribed by the Secretary of the Interior, to such purposes as will best promote the happiness and prosperity of the members of the tribe and will encourage able-bodied Indians in the habits of industry and peace.

Withholding of annuities from intoxicated persons.
Mar. 3, 1847, c. 66, s. 3, v. 9, p. 203.
Sec. 2087, R.S.

1930. No annuities, or moneys, or goods, shall be paid or distributed to Indians while they are under the influence of any description of intoxicating liquor, nor while there are good and sufficient reasons leading the officers or agents, whose duty it may be to make such payments or distribution, to believe that there is any species of intoxicating liquor within convenient reach of the Indians, nor until the chiefs and headmen of the tribe shall have pledged themselves to use all their influence and to make all proper exertions to prevent the introduction and sale of such liquor in their country.

Army officer to be present at delivery of annuities.

1931. The superintendent, agent, or subagent, together with such military officer as the President may direct, shall

June 30, 1834, c. 162, s. 13, v. 4, p. 737. Minis *v.* U. S., 15 Pet., 423.
Sec. 2088, R. S.

be present and certify to the delivery of all goods and money required to be paid or delivered to the Indians.[1]

Mode of disbursements.
Mar. 3, 1857, c. 90, s. 1, v. 11, p. 169.
Sec. 2089, R. S.

1932. At the discretion of the President all disbursements of moneys, whether for annuities or otherwise, to fulfill treaty stipulations with individual Indians or Indian tribes, shall be made in person by the superintendents of Indian affairs, where superintendencies exist, to all Indians or tribes within the limits of their respective superintendencies, in the presence of the local agents and interpreters, who shall witness the same, under such regulations as the Secretary of the Interior may direct.

Mode of distribution of goods.
Apr. 10, 1869, c. 16, s. 2, v. 16, p. 39.
Sec. 2090, R. S.

1933. Whenever goods and merchandise are delivered to the chiefs of a tribe, for the tribe, such goods and merchandise shall be turned over by the agent or superintendent of such tribe to the chiefs in bulk, and in the original package, as nearly as practicable, and in the presence of the headmen of the tribe, if practicable, to be distributed to the tribe by the chiefs in such manner as the chiefs may deem best, in the presence of the agent or superintendent.

Number of Indians present at issues to be reported.
Feb. 14, 1873, c. 138, s. 7, v. 17, pp. 463, 464.
Sec. 2109, R. S.

1934. Whenever the issue of food, clothing, or supplies of any kind to Indians is provided for, it shall be the duty of the agent or commissioner issuing the same, at such issue thereof, whether it be both of food and clothing, or either of them, or of any kind of supplies, to report to the Commissioner of Indian Affairs the number of Indians present and actually receiving the same.

Special agent to make payments.
Mar. 3, 1895, s. 11, v. 28, p. 910.

1935. In all payments or disbursements of money to Indians individually the Secretary of the Interior is hereby authorized, in his discretion, to detail an officer from his Department or appoint a special agent to make or to superintend and inspect such payment; and when made by special agent the Secretary shall fix a reasonable compensation for the services of such special agent and pay it out of the money to be disbursed. In all cases the agent making such payment shall give bond to the United States in double the amount to be disbursed, with good and sufficient security, to be approved by the Secretary, conditioned for the faithful performance of his duties. All such payments to be made under such rules and regulations as the Secretary may prescribe. *Sec. 11, act of March 3, 1895 (28 Stat. L., 910).*

Compensation.

Bond.

---

[1] An officer of the Army who, under proper authority, witnesses and certifies to the issue of annuity goods to Indians is entitled to actual traveling expenses, but not to mileage, while traveling in the performance of such duty, such expenses to be paid from the proper Indian appropriation. 5 Compt. Dec., 982.

1936. No moneys or annuities stipulated by any treaty with an Indian tribe for which appropriations are made shall be expended for, or paid, or delivered to any tribe which, since the next preceding payment under such treaty, has engaged in hostilities against the United States, or against its citizens peacefully or lawfully sojourning or traveling within its jurisdiction at the time of such hostilities; nor in such case shall such stipulated payments or deliveries be resumed until new appropriations shall have been made therefor by Congress. And the Commissioner of Indian Affairs shall report to Congress, at each session, any case of hostilities, by any tribe with which the United States has treaty stipulations, which has occurred since his next preceding report.

Annuities to hostile Indians.
Mar. 2, 1867, c. 173, s. 2, v. 14, p. 515.
Sec. 2100, R.S.

1937. No delivery of goods or merchandise shall be made to the chiefs of any tribe, by authority of any treaty, if such chiefs have violated the stipulations contained in such treaty upon their part.

Goods withheld from chiefs who have violated treaty stipulations.
Apr. 10, 1869, c. 16, s. 2, v. 16, p. 39.
Sec. 2101, R.S.

1938. All persons whatsoever charged or trusted with the disbursement or application of money, goods, or effects of any kind for the benefit of the Indians shall settle their accounts, annually, at the Department of the Interior on the first day of October; and copies of the same shall be laid before Congress, at the commencement of the ensuing session, by the proper accounting officers, together with a list of the names of all persons to whom money, goods, or effects have been delivered within the preceding year for the benefit of the Indians, specifying the amount and object for which they were intended, and showing who are delinquents, if any, in forwarding their accounts according to the provisions of this section; and also with a list of the names of all persons appointed or employed under this Title, with the dates of their appointment or employment, and the salary and pay of each.

Annual accounts of disbursements, etc.
June 30, 1834, c. 162, s. 13, v. 4, p. 737; Mar. 3, 1875, c. 132, s. 8, v. 18, p. 450.
Sec. 2091, R.S.

1939. Hereafter all Indians when they arrive at the age of 18 years shall have the right to receive and receipt for all annuity money that may be due or become due to them, if not otherwise incapacitated under the regulations of the Indian Office. *Sec. 8, act of March 1, 1899 (30 Stat. L., 947).*

Annuities to minors.
Mar. 1, 1899, s. 8, v. 30, p. 947.

1940. The Secretary of the Interior shall withhold from any tribe of Indians who may hold American captives any moneys due them from the United States until such captives have been surrendered to the lawful authorities of the United States.

Moneys due Indians holding American captives.
May 15, 1870, Res. No. 62, s. 3, v. 16, p. 377.
Sec. 2102, R.S.

GOVERNMENT AND PROTECTION OF INDIANS.

Par.
1941. Sending seditious messages.
1942. Carrying seditious messages.
1943. Correspondence with foreign nations.
1944. General superintendence by President.
1945. Survey of reservations.
1946. White men not to acquire tribal rights by marriage to Indian women.
1947. Indian women marrying white men, to become citizens.
1948. Evidence of marriage.
1949. Legitimacy of children.
1950. Purchases or grants from Indians.
1951. Driving stock on Indian lands.
1952. Settling on Indian lands.
1953–1955. Protection of Indians desiring civilized life.
1956. Penalties, how recovered.
1957. Proceedings against goods.
1958. Burden of proof.
1959. Sales of Indian cattle by agents.

Sending seditious messages; penalty.
June 30, 1834, c. 161, s. 13, v. 4, p. 731.
Sec. 2111, R.S.

1941. Every person who sends any talk, speech, message, or letter to any Indian nation, tribe, chief, or individual, with an intent to produce a contravention or infraction of any treaty or law of the United States, or to disturb the peace and tranquillity of the United States, is liable to a penalty of two thousand dollars.

Carrying seditious messages: penalty.
June 30, 1834, c. 161, s. 14, v. 4, p. 731.
Sec. 2112, R.S.

1942. Every person who carries or delivers any talk, message, speech, or letter, intended to produce a contravention or infraction of any treaty or law of the United States, or to disturb the peace or tranquillity of the United States, knowing the contents thereof, to or from any Indian nation, tribe, chief, or individual, from or to any person or persons whatever, residing within the United States, or from or to any subject, citizen, or agent of any foreign power or state, is liable to a penalty of one thousand dollars.

Correspondence with foreign nations, to excite Indians to war; penalty.
June 30, 1834, c. 161, s. 15, v. 4, p. 731.
Sec. 2113, R.S.

1943. Every person who carries on a correspondence, by letter or otherwise, with any foreign nation or power, with an intent to induce such foreign nation or power to excite any Indian nation, tribe, chief, or individual to war against the United States, or to the violation of any existing treaty; or who alienates, or attempts to alienate, the confidence of any Indian or Indians from the Government of the United States, is liable to a penalty of one thousand dollars.

General superintendence by the President over tribes removed west of the Mississippi.
May 28, 1830, c. 148, ss. 7, 8, v. 4, p. 412.
Sec. 2114, R.S.

1944. The President is authorized to exercise general superintendence and care over any tribe or nation which was removed upon an exchange of territory under authority of the act of May twenty-eighth, eighteen hundred and thirty, "to provide for an exchange of lands with the Indians residing in any of the States or Territories, and for their removal west of the Mississippi," and to cause such tribe or nation to be protected, at their new residence, against all interruption or disturbance from any other tribe or nation of Indians, or from any other person or persons whatever.[1]

Survey of Indian reservations.
Apr. 8, 1864, c. 48, s. 6, v. 13, p. 41.
Sec. 2115, R. S.

1945. Whenever it becomes necessary to survey any Indian or other reservations, or any land, the same shall be surveyed under the direction and control of the General Land Office, and as nearly as may be in conformity to the rules and regulations under which other public lands are surveyed.

White men marrying Indian women not to acquire tribal rights.
Aug. 9, 1888, v. 25, p. 392.

1946. No white man, not otherwise a member of any tribe of Indians, who may hereafter marry an Indian woman, member of any Indian tribe in the United States or any of its Territories, except the Five Civilized Tribes in the Indian Territory, shall by such marriage hereafter acquire any right to any tribal property, privilege, or interest whatever to which any member of such tribe is entitled.[2] *Act of August 9, 1888 (25 Stat. L., 392).*

Indian women marrying white men to become citizens.
Sec. 2, *ibid.*

1947. Every Indian woman, member of any such tribe of Indians, who may hereafter be married to any citizen of the United States is hereby declared to become by such marriage a citizen of the United States, with all the rights, privileges, and immunities of any such citizen, being a married woman: *Provided*, That nothing in this

Proviso.

---

[1] The internal affairs of the Indians were never interfered with by England, and the United States has always recognized them as nations separate from, but dependent upon, us. Worcester *v.* Georgia, 6 Pet., 515.

The States can not withdraw Indians within their limits from the operation of the laws of Congress regulating trade with them. U. S. *v.* Holliday, 3 Wall., 407.

If the tribal organization is recognized by the National Government as existing, the States can not regard it as gone. The Kansas Indians, 5 Wall., 737.

While the Government of the United States has recognized in the Indian tribes heretofore a state of semiindependence and pupilage, it has the right and authority, instead of controlling them by treaties, to govern them by acts of Congress, they being within the geographical limits of the United States and being necessarily subject to the laws which Congress may enact for their protection and for the protection of the people with whom they come in contact. U. S. *v.* Kagama, 118 U. S., 375; Choctaw Nation *v.* U. S., 119 U. S., 1.

The States have no such power over them as long as they maintain their tribal relations. Ibid.

The Indians owe no allegiance to a State within which their reservation may be established, and the State gives them no protection. Ibid.

Where Indians on a reservation made by order of the President are organized tribes or bands, and are placed under the charge of an agent appointed by the Government, the laws applicable to Indian reservations must be regarded as applicable to them. XVIII Opin. Att. Gen., 563.

[2] The fact that a man is permitted to live on a reservation with his Indian wife does not raise the presumption that the Government intended that he should acquire the status of a tribal Indian. Stiff *v.* McLoughlin, 48 Pac. Rep., 232. One not an Indian acquires no tribal relations by marriage with an Indian woman and residence on a reservation. Ibid. See also Nofire *v.* U. S., 164 U. S., 657. For rights of the issue of such marriages see sec. 10, act of June 7, 1897 (30 Stat. L., 62), par. 1949, *post.*

Tribal rights.

act contained shall impair or in any way affect the right or title of such married woman to any tribal property or any interest therein. *Sec. 2, ibid.*

Evidence of marriage.
Sec. 3, *ibid.*

1948. Whenever the marriage of any white man with any Indian woman, a member of any such tribe of Indians, is required or offered to be proved in any judicial proceeding, evidence of the admission of such fact by the party against whom the proceeding is had, or evidence of general repute, or of cohabitation as married persons, or any other circumstantial or presumptive evidence from which the fact may be inferred, shall be competent. *Sec. 3, ibid.*

Legitimacy of children.
June 7, 1897, s. 10, v. 30, p. 62.

1949. All children born of a marriage heretofore solemnized between a white man and an Indian women by blood and not by adoption, where said Indian woman is at this time, or was at the time of her death, recognized by any tribe, shall have the same rights and privileges to the property of the tribe to which the mother belongs, or belonged at the time of her death, by blood, as any other member of the tribe, and no prior act of Congress shall be construed to debar such child of such right. *Sec. 10, act of June 7, 1897* (*30 Stat. L.*, *62*).

Purchases or grants from Indians.
June 30, 1834, c. 161, s. 12, v. 4, p. 730.
Johnson's Lessee *v.* McIntosh, 8 Wh., 543.
Sec. 2116, R.S.

1950. No purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians shall be of any validity in law or equity unless the same be made by treaty or convention entered into pursuant to the Constitution. Every person who, not being employed under the authority of the United States, attempts to negotiate such treaty or convention, directly or indirectly, or to treat with any such nation or tribe of Indians for the title or purchase of any lands by them held or claimed, is liable to a penalty of one thousand dollars. The agent of any State who may be present at any treaty held with Indians under the authority of the United States, in the presence and with the approbation of the commissioner of the United States appointed to hold the same, may, however, propose to, and adjust with, the Indians the compensation to be made for their claim to lands within such State which shall be extinguished by treaty.[1]

Driving stock to feed on Indian lands.
June 30, 1834, c. 161, s. 9, v. 4, p. 730.

1951. Every person who drives or otherwise conveys any stock of horses, mules, or cattle to range and feed on any land belonging to any Indian or Indian tribe, without the consent of such tribe, is liable to a penalty of one dollar for each animal of such stock.[1]

---

[1] The inhibition contained in section 2116 of the Revised Statutes has the same application to individual Indians that it has to Indian nations and tribes. XVIII Opin. Att. Gen., 486.

U. S. *v.* Mattock, 2 Saw., 148.
Sec. 2117, R.S.

1952. Every person who makes a settlement on any lands belonging, secured, or granted by treaty with the United States to any Indian tribe, or surveys or attempts to survey such lands, or to designate any of the boundaries by marking trees, or otherwise, is liable to a penalty of one thousand dollars. The President may, moreover, take such measures and employ such military force as he may judge necessary to remove any such person from the lands.[2]

Settling on or surveying lands belonging to Indians by treaty.
June 30, 1834, c. 161, s. 11, v. 4, p. 730.
Sec. 2118, R.S.

1953. Whenever any Indian, being a member of any band or tribe with whom the Government has or shall have entered into treaty stipulations, being desirous to adopt the habits of civilized life, has had a portion of the lands belonging to his tribe allotted to him in severalty, in pursuance of such treaty stipulations, the agent and superintendent of such tribe shall take such measures, not inconsistent with law, as may be necessary to protect such Indian in the quiet enjoyment of the lands so allotted to him.

Protection of Indians desiring civilized life.
June 14, 1862, c. 101, s. 1, v. 12, p. 427.
Sec. 2119, R.S.

1954. Whenever any person of Indian blood belonging to a band or tribe which receives or is entitled to receive annuities from the United States, and who has not adopted the habits and customs of civilized life and received his lands in severalty by allotment, as mentioned in the preceding section, commits any trespass upon the lands or premises of any Indian who has so received his lands by allotment, the superintendent and agent of such band or tribe shall ascertain the damages resulting from such trespass, and the sum so ascertained shall be withheld from the payment next thereafter to be made, either to the band or tribe to which the party committing such trespass shall belong, as in the discretion of the superintendent he shall deem proper; and the sum so withheld shall, if the Secretary of the Interior approves, be paid over by the agent or superintendent to the party injured.

Indians trespassing upon lands of civilized Indians.
June 14, 1862, c. 101, s. 2, v. 12, p. 427.
Sec. 2120, R.S.

1955. Whenever such trespasser as is mentioned in the preceding section is the chief or headman of a band or

Suspension of chief for trespass.

---

[1] Sheep are "cattle" within the meaning of section 2117 of the Revised Statutes, which imposes a penalty for driving any stock, etc., to range and feed on Indian lands without the consent of the tribe. XVIII Opin. Att. Gen., 91; U. S. *v.* Mattock, 2 Sawyer, 148. See also U. S. *v.* Loring, 34 Fed. Rep., 715, and XVI Opin. Att. Gen., 568. There is no law empowering the Interior Department to authorize Indians to lease their lands for grazing purposes. * * * Neither the President nor the Secretary has authority to make a lease, for such purposes, of any part of an Indian reservation; nor would their approval of any such lease made by Indians render it lawful and valid. XVIII Opin. Att. Gen., 235.

[2] Worcester *v.* Georgia, 6 Peters, 515; Clark *v.* Smith, 13 ibid., 195; Lattimer *v.* Poteet, 4 McLean, 82.

June 14, 1862, c. 101, s. 3, v. 12, p. 427.
Sec. 2121, R. S.

tribe, the superintendent of Indian affairs in his district shall also suspend the trespasser from his office for three months, and shall during that time deprive him of all the benefits and emoluments connected therewith; but the chief or headman may be sooner restored to his former standing if the superintendent shall so direct.

Penalties, how recovered.
June 30, 1834, c. 161, s. 27, v. 4, p. 733.
Sec. 2124, R. S.

1956. All penalties which shall accrue under this Title[1] shall be sued for and recovered in an action in the nature of an action of debt, in the name of the United States, before any court having jurisdiction of the same, in any State or Territory in which the defendant shall be arrested or found, the one half to the use of the informer and the other half to the use of the United States, except when the prosecution shall be first instituted on behalf of the United States, in which case the whole shall be to their use.

Proceedings against goods.
June 30, 1834, c. 161, s. 28, v. 4, p. 734.
Sec. 2125, R. S.

1957. When goods or other property shall be seized for any violation of this Title,[1] it shall be lawful for the person prosecuting on behalf of the United States to proceed against such goods, or other property, in the manner directed to be observed in the case of goods, wares, or merchandise brought into the United States in violation of the revenue laws.

Burden of proof.
June 30, 1834, c. 161, s. 22, v. 4, p. 733.
Sec. 2126, R. S.

1958. In all trials about the right of property in which an Indian may be a party on one side and a white person on the other, the burden of proof shall rest upon the white person whenever the Indian shall make out a presumption of title in himself from the fact of previous possession or ownership.

Sale of cattle, etc., of the Indians by agents.

1959. The agent of each tribe of Indians, lawfully residing in the Indian country,[2] is authorized to sell for the

---

[1] Title XXVIII, Revised Statutes.

[2] The term "Indian country" contained in section 1 of the act of June 30, 1834 (4 Stat. L., 79), though not incorporated in the Revised Statutes, and though repealed simultaneously with their enactment, may be referred to in order to determine what is meant by the term when used in statutes; and it applies to all the country to which the Indian title has not been extinguished within the limits of the United States, whether within a reservation or not, and whether acquired before or since the passage of that act. Ex parte Crow Dog, 109 U. S., 556; Bates *v.* Clark, 95 U. S., 204. See also, as to the status of the Indian Territory, Cook *v.* U. S., 138 U. S., 157.

Held (October, 1877) that the term "Indian country," as employed in the statutes regulating trade and intercourse with the Indians (see, particularly, Ch. IV, Title XXVIII, Rev. Stat.), might properly be defined in general as including the following territory, viz: Indian reservations occupied by Indian tribes; other districts so occupied to which the Indian title has not been extinguished; any districts not in other respects Indian country over which the operation of those statutes may be extended by treaty or act of Congress. (*a*) Dig. Opin. J. A. G., par. 1498.

---

[a] See this opinion as adopted and incorporated in G. O. 97, Headquarters of Army, 1877; also, in the same connection, XIV Opins. Att. Gen., 290; United States *v.* Forty-three Gallons of Whisky, 3 Otto, 188; Bates *v.* Clark, 5 ibid., 204; U. S. *v.* Seveloff, 2 Sawyer, 311. That, in view of the act of March 3. 1873, extending to it certain provisions of the act of June 30, 1834, the Territory of Alaska is "Indian country," so far as concerns the introduction and disposition of spirituous liquor, and that persons violating such provisions may therefore be arrested by military force. See In re Carr, 3 Sawyer, 316; also citation from same case in note to Alaska, § 2, and XIV Opins. Att. Gen., 327; Patchen *v.* U. S., 11 Fed. Rep., 47; U. S. *v.* Forty-three Cases of Cognac Brandy, 14 ibid., 539.

Mar. 3, 1865, c. 127, s. 9, v. 13, p. 563.
Sec. 2127, R. S.

benefit of such Indians any cattle, horses, or other live stock belonging to the Indians, and not required for their use and subsistence, under such regulations as shall be established by the Secretary of the Interior. But no such sale shall be made so as to interfere with the execution of any order lawfully issued by the Secretary of War connected with the movement or subsistence of troops.

INDIAN TRADERS.

Par.
1960. Appointment.
1961. Appointees.
1962. Licenses to trade.
1963. Refusal of license.
1964. Revocation of licenses.
1965. Prohibition of trade by President.
1966. Penalty for unlicensed trading.
1967. Employees not to trade.

Par.
1968. Expulsion of foreigners without passports from reservations.
1969. Prohibited purchases and sales.
1970. Sale of arms to Indians.
1971. The same.
1972. Hunting on reservations forbidden.
1973. Removing cattle; penalty.
1974. Sales of cattle; penalty.

Appointment.
Aug. 15, 1876, s. 5, v. 19, p. 200.

1960. Hereafter the Commissioner of Indian Affairs shall have the sole power and authority to appoint traders to the Indian tribes, and to make such rules and regulations as he may deem just and proper, specifying the kind and quantity of goods and the prices at which such goods shall be sold to the Indians. *Sec. 5, act of August 15, 1876 (19 Stat. L., 200).*

Appointees.
July 26, 1866, c. 266, s. 4, v. 14, p. 280.
Sec. 2128, R. S.

1961. Any loyal person, a citizen of the United States, of good moral character, shall be permitted to trade with any Indian tribe upon giving bond to the United States in the penal sum of not less than five nor more than ten thousand dollars, with at least two good sureties, to be approved by the superintendent of the district within which such person proposes to trade, or by the United States district judge or district attorney for the district in which the obligor resides, renewable each year, conditioned that such person will faithfully observe all laws and regulations made for the government of trade and intercourse with the Indian tribes, and in no respect violate the same.

License to trade.
June 30, 1834, c. 161, s. 2, v. 4, p. 729.
U. S. *v.* Cisna, 1 McLean, 254.
Sec. 2129, R. S.

1962. No person shall be permitted to trade with any of the Indians in the Indian country without a license therefor from a superintendent of Indian affairs, or Indian agent, or subagent, which license shall be issued for a term not exceeding two years for the tribes east of the Mississippi and not exceeding three years for the tribes west of that river.[1]

---

[1] The Secretary of War has no general authority to license trade with Indians in the Indian country. By section 2129, Revised Statutes, such licenses can be given

Refusal of license.
June 30, 1834, c. 161, s. 3, v. 4, p. 729.
Sec. 2130, R.S.

1963. Any superintendent or agent may refuse an application for a license to trade if he is satisfied that the applicant is a person of bad character, or that it would be improper to permit him to reside in the Indian country, or if a license previously granted to such applicant has been revoked, or a forfeiture of his bond decreed. But an appeal may be had from the agent or the superintendent to the Commissioner of Indian Affairs.

Revocation of license.
June 30, 1834, c. 161, s. 2, v. 4, p. 729.
Sec. 2131, R.S.

1964. The superintendent of the district shall have power to revoke and cancel any license to trade within the Indian country whenever the person licensed has, in his opinion, transgressed any of the laws or regulations provided for the government of trade and intercourse with the Indian tribes, or whenever, in his opinion, it is improper to permit such person to remain in the Indian country. No trade with the tribes shall be carried on within their boundary except at certain suitable and convenient places, to be designated from time to time by the superintendents, agents, and subagents, and to be inserted in the license. The persons granting or revoking such licenses shall forthwith report the same to the Commissioner of Indian Affairs for his approval or disapproval.[1]

Prohibition of trade by the President.
June 30, 1834, c. 161, s. 3, v. 4, p. 729.
Sec. 2132, R.S.

1965. The President is authorized, whenever in his opinion the public interest may require the same, to prohibit the introduction of goods, or of any particular article, into the country belonging to any Indian tribe, and to direct all licenses to trade with such tribe to be revoked, and all applications therefor to be rejected. No trader to any other tribe shall, so long as such prohibition may continue, trade with any Indians of or for the tribe against which such prohibition is issued.

Penalty for trading without a license.
June 30, 1834, c. 161, s. 4, v. 4, p. 729; July 31, 1882, c. 360, v. 22, p. 179.
Sec. 2133, R.S.

1966. Any person, other than an Indian of the full blood, who shall attempt to reside in the Indian country, or on any Indian reservation, as a trader, or to introduce goods, or to trade therein, without such license, shall forfeit all merchandise offered for sale to the Indians or found in his

---

only by a "superintendent of Indian affairs, Indian agent, or subagent." Dig. Opin. J. A. G., par. 1499.

A trader at a military post in the Indian country can not lawfully maintain a traffic with the Indians unless he be properly licensed for such trade. XVI Opins. Att. Gen., 403. License to trade with the Indians at the establishments of post traders can not be given by the military authorities. Ibid.

[1] The fact that an Indian trader is licensed by the Government to trade with the Indians does not exempt his stock in trade from State and county taxation, such trader being a mere licensee, and not an agent of the Government. Cosier *v.* McMillan, 56 Pac. Rep., 965. For a contrary decision, in which it was held that an Indian trader was an agent of the United States and, for that reason, exempt from State and Territorial taxation, see Fremont County (Wyo.) *v.* Moore, 19 Pac. Rep., 438.

possession, and shall moreover be liable to a penalty of five hundred dollars: *Provided*, That this section shall not apply to any person residing among or trading with the Choctaws, Cherokees, Chickasaws, Creeks, or Seminoles, commonly called the Five Civilized Tribes, residing in said Indian country, and belonging to the Union Agency therein: *And provided further*, That no white person shall be employed as a clerk by any Indian trader, except such as trade with said Five Civilized Tribes, unless first licensed so to do by the Commissioner of Indian Affairs, under and in conformity to regulations to be established by the Secretary of the Interior. *Act of July 31, 1882 (22 Stat. L., 179).*

Employees not to trade with the Indians.
June 30, 1834, c. 162, s. 14, v. 4, p. 738.
Sec. 2078, R.S.

1967. No person employed in Indian affairs shall have any interest or concern in any trade with the Indians except for, and on account of, the United States; and any person offending herein shall be liable to a penalty of five thousand dollars, and shall be removed from his office.

Penalty for foreigners entering Indian country without passports.
June 30, 1834, c. 161, s. 6, v. 4, p. 730.
Sec. 2134, R.S.

1968. Every foreigner[1] who shall go to the Indian country without a passport from the Department of the Interior, superintendent, agent, or subagent of Indian affairs, or officer of the United States commanding the nearest military post on the frontiers, or who shall remain intentionally therein after the expiration of such passport, shall be liable to a penalty of one thousand dollars. Every such passport shall express the object of such person, the time he is allowed to remain, and the route he is to travel.

Prohibited purchases and sales.
June 30, 1834, c. 161, s. 7, v. 4, p. 730.
Sec. 2135, R.S.

1969. Every person, other than an Indian, who, within the Indian country, purchases or receives of any Indian, in the way of barter, trade, or pledge, a gun, trap, or other article commonly used in hunting, any instrument of husbandry, or cooking utensils of the kind commonly obtained by the Indians in their intercourse with the white people, or any article of clothing, except skins or furs, shall be liable to a penalty of fifty dollars.

Sale of arms, etc., to be prohibited.
Feb. 14, 1873, v. 17, p. 457.
Sec. 467, R. S.

1970. The Secretary of the Interior shall adopt such rules as may be necessary to prohibit the sale of arms or ammunition within any district or country occupied by uncivilized or hostile Indians, and shall enforce the same.

Trading or selling arms, etc., in any district occupied by uncivilized or hostile Indians; penalty.

1971. If any trader, his agent, or any person acting for or under him, shall sell any arms or ammunition at his trading post or other place within any district or country

---

[1] The word "foreigner" in section 2134 of the Revised Statutes is used in its ordinary signification, meaning one who is born out of the United States and is not naturalized, or who owes allegiance to any other government than that of the United States. XVIII Opin. Atty. Gen., 555.

Feb. 14, 1873, c. 138, s. 1, v. 17, p. 459; Aug. 5, 1876, J. R. No. 20, v. 19, p. 216.
Sec. 2136, R. S.

occupied by uncivilized or hostile Indians, contrary to the rules and regulations of the Secretary of the Interior, such trader shall forfeit his right to trade with the Indians, and the Secretary shall exclude such trader, and the agent, or other person so offending, from the district or country so occupied.

MISCELLANEOUS PROVISIONS.

Prohibition of hunting on Indian lands.
June 30, 1834, c. 161, s. 8, v. 4, p. 730.
Sec. 2137, R. S.

1972. Every person, other than an Indian, who, within the limits of any tribe with whom the United States has existing treaties, hunts, or traps, or takes and destroys any peltries or game, except for subsistence in the Indian country, shall forfeit all the traps, guns, and ammunition in his possession, used or procured to be used for that purpose, and all peltries so taken; and shall be liable in addition to a penalty of five hundred dollars.[1]

Penalty for removing cattle from Indian country.
Mar. 3, 1865, c. 127, s. 8, v. 13, p. 563.
Sec. 2138, R. S.

1973. Every person who drives or removes, except by authority of an order lawfully issued by the Secretary of War, connected with the movement or subsistence of troops, any cattle, horses, or other stock from the Indian country for the purposes of trade or commerce, shall be punishable by imprisonment for not more than three years, or by a fine of not more than five thousand dollars, or both.[2]

Sales of cattle; penalty.
July 4, 1884, v. 23, p. 94.

1974. Where Indians are in possession or control of cattle or their increase which have been purchased by the Government, such cattle shall not be sold to any person not a member of the tribe to which the owners of the cattle belong, or to any citizen of the United States, whether intermarried with the Indians or not, except with the consent in writing of the agent of the tribe to which the owner or possessor of the cattle belongs. And all sales made in violation of this provision shall be void, and the offending purchaser, on conviction thereof, shall be fined not less than five hundred dollars and imprisoned not less than six months. *Act of July 4, 1884 (23 Stat. L., 94).*

---

[1] Property seized by the military under the provisions of section 2137 of the Revised Statutes should, as soon as practicable, after report of seizure to the United States attorney, be placed in the custody of the proper civil officers. XVIII Opin. Att. Gen., 555; ibid., 544.

Section 5388 of the Revised Statutes makes no provision for seizure of property belonging to a wrongdoer. XVIII Opin. Att. Gen., 555.

[2] See paragraph 1959, *ante*.

SALES OF LIQUOR TO INDIANS—INTRODUCING LIQUOR INTO THE INDIAN COUNTRY.

Par.
1975. Introduction of liquor, etc.
1976. The same.
1977–1978. Authority of War Department; repealing clause.
1979. Complaints; arrests; trials.
1980. Indians in Alaska.

Par.
1981. Sales to minors.
1982. Sales in the Indian Territory.
1983. Power to search for liquors, etc.
1984. Military persons not to furnish, barter, donate, etc., liquors.
1985. Sales in Indian country.

Introduction of intoxicating liquors in Indian country forbidden.
Penalty.
July 23, 1892, v. 27, p. 260.
Sec. 2139, R. S.

1975. No ardent spirits, ale, beer, wine, or intoxicating liquor or liquors of whatever kind shall be introduced, under any pretense, into the Indian country.[1] Every person who sells, exchanges, gives, barters, or disposes of any ardent spirits, ale, beer, wine, or intoxicating liquors of any kind to any Indian under charge of any Indian superintendent or agent, or introduces or attempts to introduce any ardent spirits, ale, wine, beer, or intoxicating liquor of any kind into the Indian country shall be punished by imprisonment for not more than two years and by fine of not more than three hundred dollars for each offense. *Act of July 23, 1892 (27 Stat. L., 260).*

The same.
Jan. 30, 1897, v. 29, p. 506.

1976. Any person who shall sell, give away, dispose of, exchange, or barter any malt, spirituous, or vinous liquor, including beer, ale and wine, or any ardent or other intoxicating liquor of any kind whatsoever, or any essence, extract, bitters, preparation, compound, composition, or any article whatsoever, under any name, label, or brand, which produces intoxication, to any Indian to whom allotment of land has been made while the title to the same shall be held in trust by the Government, or to any Indian a ward of the Government under charge of any Indian superintendent or agent, or any Indian, including mixed bloods, over whom the Government, through any of its departments, exercise guardianship, and any person who shall introduce or attempt to introduce any malt, spirituous, or vinous liquor, including beer, ale, and wine, or any ardent or intoxicating liquor of any kind whatsoever into the Indian country, which term shall include any Indian allotment while the title to the same shall be held in trust by the Government, or while the same shall remain inalienable by the allottee without the consent of the United States, shall be punished by imprisonment for not less than sixty days, and by a fine of not less than one hundred dollars for the first offense and not less than two hundred dollars for each offense thereafter: *Provided, however*, that the person convicted shall be committed until fine and costs are paid. *Act of January 30, 1897 (29 Stat. L., 506).*

---

[1] A stock of liquors is not introduced into the Indian country by being transported across an Indian reservation to a place where it may be lawfully sold and is not subject to seizure while in transit nor after its arrival at its place of destination. U. S. *v.* Four Bottles of Sour Mash Whisky, 90 Feb. Rep., 720.

The disposition of spirituous liquors to an Indian, under the charge of an Indian agent, who has abandoned his nomadic life and tribal relations and adopted the habits and manners of civilized people violates section 2139 of the Revised Statutes. U. S. *v.* Osborn, 52 Fed. Rep., 58.

Section 2139 of the Revised Statutes provides that every person who disposes of spirituous liquors to any Indian under the charge of any Indian superintendent or agent shall be punished, etc. *Held*, that an Indian of the Nez Percés tribe, a soldier in the United States Army, is within the meaning of the statute. U. S. *v.* Hurshman, 53 Fed. Rep., 543. It is no defense to a prosecution under section 2139 for introducing spirituous liquors into the Indian country that the United States has licensed the traffic in such liquors therein. U. S. *v.* Ellis, 51 ibid., 808.

As section 2139 of the Revised Statutes previous to the amendment of July 23, 1892, made punishable the introduction into the Indian country of "spirituous liquor or wine" only, it did not include lager beer, that being a malt liquor made by fermentation. In re McDonough, 49 ibid., 360; U. S. *v.* Ellis, 51 ibid., 808, reversed in Sarlis *v.* U. S., 152 U. S., 570.

Introduction by authority of War Department. *Ibid.*

1977. But it shall be a sufficient defense to any charge of introducing or attempting to introduce ardent spirits, ale, beer, wine, or intoxicating liquors into the Indian country that the acts charged were done under authority, in writing, from the War Department or any officer duly authorized thereto by the War Department.[1] *Ibid.*

Repeal. Sec. 2, *ibid.*

1978. So much of the act of the twenty-third of July, eighteen hundred and ninety-two, as is inconsistent with the provisions of this act is hereby repealed. *Sec. 2, ibid.*

Complaints; arrests; trials. July 23, 1892, v. 27, p. 260.

1979. All complaints for the arrest of any person or persons made for violation of any of the provisions of this act shall be made in the county where the offense shall have been committed, or if committed upon or within

---

[1] The Secretary of War has no general authority to license the introduction of spirituous liquors into the Indian country. Under section 2139, Revised Statutes, and the act of July 23, 1892, chapter 234, amending that section and extending it to beer and other malt liquors, the Secretary of War is without authority to permit the introduction into that country of any spirituous or malt liquors intended for sale. Dig. Opin. J. A. G., par. 1500.

Where an enlisted Indian soldier belongs to a tribe which remains "under the charge of any Indian superintendent or agent," it is an offense under section 2139, Revised Statutes, to sell him spirituous liquor. Otherwise if he be attached to no such tribe and is under no such "charge." (*a*) Ibid., par. 1508.

Held that there was no statute of the United States under which the selling of spirituous liquor to Indian soldiers (not under the charge of an Indian agent) stationed on a United States military reservation, by a civilian making the sales off the reservation, could be punished as an offense. Ibid., par. 1510.

In view of the terms of the act of May 21, 1884, establishing a civil government for Alaska, *held* that the military authorities could no longer legally issue permits for the introduction of liquors into Alaska under G. O. 57 of 1874; section 14 of said act being deemed impliedly to repeal, as to Alaska, that portion of section 2139, Revised Statutes, which empowered the Secretary of War to authorize such introduction. (*b*) Ibid., par. 1502.

---

a U. S. *v.* Hurshman, 53 Fed. Rep., 543. *b* See U. S. *v.* Nelson, 29 Fed. Rep. 202.

any reservation not included in any county, then in any county adjoining such reservation, and if in the Indian Territory, before the United States court commissioner or commissioner of the circuit court of the United States residing nearest the place where the offense was committed who is not for any reason disqualified; but in all cases such arrests shall be made before any United States court commissioner residing in such adjoining county or before any magistrate or judicial officer authorized by the laws of the State in which such reservation is located to issue warrants for the arrest and examination of offenders by section ten hundred and fourteen of the Revised Statutes of the United States. And all persons so arrested shall, unless discharged upon examination, be held to answer and stand trial before the court of the United States having jurisdiction of the offense. *Act of July 23, 1892 (27 Stat. L., 260).*

Sales of liquor or firearms to Indians in Alaska.
Mar. 3, 1899, s. 142, v. 30, p. 1253.

1980. If any person shall, without the authority of the United States or some authorized officer thereof, sell, barter, or give to any Indian or half-breed who lives and associates with Indians any firearms or ammunition therefor whatever, or any spirituous, malt, or vinous liquor, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than two months nor more than six months, or by fine not less than one nor more than five hundred dollars. *Sec. 142, act of March 3, 1899 (30 Stat. L., 1253).*

Sales of liquor in Alaska.
Mar. 3, 1899, s. 466, v. 30, p. 1253.

1981. Under the license issued in accordance with this act no intoxicating liquors shall be sold, given, or in any way disposed of to any minor, Indian, or intoxicated person, or to an habitual drunkard. *Sec. 466, act of March 3, 1899 (30 Stat. L., 1253).*

Punishment for sale, etc., of liquors.
Mar. 1, 1895, v. 28, p. 693, s. 8.

1982. That any person, whether an Indian or otherwise, who shall in said Territory manufacture, sell, give away, or in any manner, or by any means furnish to anyone, either for himself or another, any vinous, malt, or fermented liquors, or any other intoxicating drinks of any kind whatsoever, whether medicated or not, or who shall carry, or in any manner have carried, into said Territory any such liquors or drinks, or who shall be interested in such manufacture, sale, giving away, furnishing to anyone, or carrying into said Territory any of such liquors or drinks, shall, upon conviction thereof, be punished by fine not exceeding five hundred dollars and by imprisonment for not less than one month nor more than five years.[1] *Sec. 8, act of March 1, 1895 (28 Stat. L., 693.)*

Power of superintendents, post agents, and commanders, etc., to search for concealed liquors.
Mar. 15, 1864, c. 33, v. 13, p. 29.
American Fur Co. *v.* U. S., 2 Pet., 358.
Sec. 2140, R. S.

1983. If any superintendent of Indian affairs, Indian agent, or subagent, or commanding officer of any military post has reason to suspect or is informed that any white person or Indian is about to introduce or has introduced any spirituous liquor or wine into the Indian country in violation of law, such superintendent, agent, subagent, or commanding officer may cause the boats, stores, packages, wagons, sleds, and places of deposit of such person to be searched; and if any such liquor is found therein, the same, together with the boats, teams, wagons, and sleds used in conveying the same, and also the goods, packages, and peltries of such person, shall be seized and delivered to the proper officer, and shall be proceeded against by libel in the proper court, and forfeited, one-half to the informer and the other half to the use of the United States; and if such person be a trader his license shall be revoked and his bond put in suit. It shall, moreover, be the duty of any person in the service of the United States or of any Indian to take and destroy any ardent spirits or wine found in the Indian country, except such as may be introduced therein by the War Department. In all cases arising under this and the preceding section Indians shall be competent witnesses.[2]

---

[1] The above statute relates to the Indian Territory, and is for that reason not operative elsewhere. The act of May 2, 1890 (26 Stat. L., 81, 97), establishing a temporary government for Oklahoma Territory, confers original jurisdiction upon the United States court for the Indian Territory to enforce the provisions of Title XXVIII, chapters three and four of the Revised Statutes, except as to the offenses defined and embraced in sections 2142 and 2143 of the Revised Statutes. Concurrent jurisdiction over the offenses defined in section 2139 was conferred upon this court in connection with the United States courts for the western district of Arkansas and the eastern district of Texas.

[2] The act of July 4, 1884, provides that no part of section twenty-one hundred and thirty-nine or of section twenty-one hundred and forty of the Revised Statutes shall be a bar to the prosecution of any officer, soldier, sutler or storekeeper, attaché, or employee of the Army of the United States who shall barter, donate, or furnish in any manner whatsoever liquors, wines, beer, or any intoxicating beverage whatsoever to any Indian. 23 Stat. L., 94.

In view of the positive terms of section 2140, Revised Statutes, an officer of the Army not only may but should "take and destroy any ardent spirits or wine found in the Indian country except such as may be introduced therein by the War Department." The section imposes this as a "duty" upon "any person in the service of the United States," including, of course, military as well as civil officials. *Held,* however, that the authority given by the statute to destroy liquor brought into an Indian reservation did not authorize the destruction by the military of a building, the private property of a citizen, in which the liquor was found stored. Dig. Opin. J. A. G., par. 1503.

In view of the duty devolved by section 2140, Revised Statutes, upon "any person in the service of the United States," to take and destroy spirituous liquors in the Indian country, *held* that a post commander in such country who seized and destroyed a quantity of such liquors introduced into such country without the authority of the Secretary of War, but not found within the limits of his military command, had not exceeded his powers. Ibid., par. 1504.

1984. No part of section twenty-one hundred and thirty-nine or of section twenty-one hundred and forty of the Revised Statutes shall be a bar to the prosecution of any officer, soldier, sutler or storekeeper, attaché, or employee of the Army of the United States who shall barter, donate, or furnish in any manner whatsoever liquors, wines, beer, or any intoxicating beverage whatsoever to any Indian.[1] *Act of July 4, 1884 (23 Stat. L., 94).*

Officers and soldiers not to barter, donate, or furnish liquors to Indians upon reservation.
July 4, 1884, v. 23, p. 94.

1985. Every person who shall, within the Indian country, set up or continue any distillery for manufacturing ardent spirits, shall be liable to a penalty of one thousand dollars; and the superintendent of Indian Affairs, Indian agent, or subagent, within the limits of whose agency any distillery of ardent spirits is set up or continued, shall forthwith destroy and break up the same.

Penalty for setting up distillery in Indian country.
June 30, 1834, c. 161, s. 21, v. 4, p. 732.
Sec. 2141, R. S.

CRIMES AND CRIMINAL OFFENSES.

Par.
1986. Forgery; depredations on mails.
1987. General laws extended to Indian country.
1988. Exceptions.
1989. Indians committing certain offenses subject to criminal laws.
1990. Assault; penalty.
1991. Arson.
1992. Rape.
1993. Horse stealing in the Indian Territory.
1994. Robbery, burglary, offenses against Indians.
1995. Repealing clause; larceny excepted.
1996. Reparation for injured property.
1997. Payment for injuries to property.
Par.
1998. Injuries to property by Indians.
1999. Timber depredations.
2000. Disposal of dead and fallen timber.
2001. Removal of persons from Indian country.
2002. Penalty for return.
2003. Removal from reservations.
2004. Employment of military force.
2005. Detention of arrested persons.
2006. Arrest of absconding Indians charged with crime.
2007. Marshals to execute process.
2008. Execution of process.
2009. Depositions.
2010. Indians not to be permitted to enter State of Texas.

1986. The general laws of the United States defining and prescribing punishments for forgery and for depredations upon the mails shall extend to the Indian country.

Forgery and depredations on mails.
Mar. 3, 1855, c. 204, s. 8, v. 10, p. 700.
Sec. 2144, R. S.

1987. Except as to crimes the punishment of which is expressly provided for in this title, the general laws of the United States as to the punishment of crimes committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country.

General laws respecting crimes extended to Indian country.
June 30, 1834, c. 161, s. 25, v. 4, p. 733; Mar. 27, 1854, c. 26, s. 3, v. 10, p. 270. U. S. *v.* Rogers, 4 How., 567.
Sec. 2145, R. S.

---

[1] The act of July 4, 1884, declaring that section 2139 of the Revised Statutes shall not be a bar to the prosecution of any officer, soldier, or employee of the United States who shall "furnish liquors, wines, beer, or any intoxicating beverage to" any Indian is not a legislative construction of such section. In re McDonough, 49 Fed. Rep., 360.

See also for the offense of selling liquor to Indians by licensed dealers in Alaska, section 466 of the act of March 3, 1899 (30 Stat. L., 1253), paragraph 1980, *ante*.

Exceptions to the operation of the preceding sections.

Mar. 27, 1854, c. 26, s. 3, v. 10, p. 270; Feb. 18, 1875, c. 80, v. 18, p. 318.

Sec. 2146, R.S.

1988. The preceding section shall not be construed to extend to crimes committed by one Indian against the person or property of another Indian, nor to any Indian committing any offense in the Indian country who has been punished by the local law of the tribe, or to any case where, by treaty stipulations, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes, respectively.[1]

Indians committing certain crimes to be subject to laws.

Sec. 9, Mar. 3, 1885, v. 23, p. 385.

1989. That immediately upon and after the date of the passage of this act all Indians committing against the person or property of another Indian or other person any of the following crimes, namely, murder, manslaughter, rape,[2] assault with intent to kill, arson, burglary, and larceny within any Territory of the United States, and either within or without an Indian reservation, shall be subject therefor to the laws of such Territory relating to said crimes, and shall be tried therefor in the same courts and in the same manner and shall be subject to the same penalties as are all other persons charged with the commission of said crimes, respectively; and the said courts are hereby given jurisdiction in all such cases; and all such Indians committing any of the above crimes against the person or property of another Indian or other person within the boundaries of any State of the United States, and within the limits of any Indian reservation, shall be subject to the same laws, tried in the same courts and in the same manner, and subject to the same penalties as are all other persons committing any of the above crimes within the exclusive jurisdiction of the United States.[1] *Sec. 9, act of March 3, 1885 (23 Stat. L., 385).*

---

[1] Neither the provisions of the treaty with the Sioux Indians of 1868 (15 Stat. L., 635), nor the provision embodied in the act of February 28, 1877 (19 Stat. L., 256), that they "shall be subject to the laws of the United States," nor any other provision in that agreement or act, operated to repeal the provision of section 2146 of the Revised Statutes, which excepts from the general jurisdiction of the courts of the United States over offenses committed in the Indian country, "crimes committed by one Indian against the person or property of another Indian," and offenses committed in Indian country by an Indian who has been punished by the local law of the tribe; and offenses where by treaty stipulation the exclusive jurisdiction over the same is or may be secured to the Indian tribes, respectively. Ex parte Crow Dog, 109 U. S., 556.

The United States circuit court has jurisdiction, under section 753, Revised Statutes, to inquire upon habeas corpus whether a member of an Indian tribe, in custody of State officers for violation of a State statute, is illegally restrained of his liberty in violation of a treaty with the Indian tribe, by virtue of which such Indian claimed the right to do the act alleged to be a violation of the State statute. In re Race Horse, 70 Fed. Rep., 598.

Indians, while preserving their tribal relations and residing upon a reservation set apart for them by the United States, are wards of the General Government and as such the subject of Federal authority, and the power to legislate for them is exclusively in Congress, and for acts committed within the limits of the reservation they are not subject to the criminal laws of the State. State *v.* Campbell, 55 N. W. Rep., 553. Independently of any question of title the Federal courts have jurisdiction, for, regarding the Indians as wards of the nation, the United States has full power to pass such laws as may be necessary to their protection and to punish all offenses committed against them within the limits of the reservation. U. S. *v.* Thomas, 151 U. S., 577.

Unless otherwise provided by treaty stipulations with an Indian tribe or by the act admitting the State into the Union, the criminal laws of the State, except so far as restricted by the authority of Congress, "to regulate commerce with the Indian tribes," extend to all crimes committed on an Indian reservation by persons other than tribal Indians. State *v.* Campbell, 55 N. W. Rep., 553.

The Territorial laws defining crimes and prescribing punishments therefor have no application to Indian reservations, where Congress has, by special enactment, created the same offenses and made them punishable under the laws of the United States. Goodson *v.* U. S., 54 Pac. Rep., 423.

[2] The offense of assault with intent to commit rape, committed by an Indian upon an Indian woman, both residing upon an Indian reservation, is not cognizable as a crime by any statute of the United States, and the United States courts have no jurisdiction of such offense. U. S. *v.* King, 81 Fed. Rep., 625.

Courts given jurisdiction in all such cases.

1990. Every white person who shall make an assault upon an Indian, or other person, and every Indian who shall make an assault upon a white person, within the Indian country, with a gun, rifle, sword, pistol, knife, or any other deadly weapon, with intent to kill or maim the person so assaulted, shall be punishable by imprisonment at hard labor for not more than five years nor less than one year.

Assault; penalty.
Mar. 27, 1854, c. 26, s. 5, v. 10, p. 270.
Sec. 2142, R.S.

1991. Every white person who shall set fire, or attempt to set fire, to any house, outhouse, cabin, stable, or other building, in the Indian country, to whomsoever belonging; and every Indian who shall set fire to any house, outhouse, cabin, stable, or other building, in the Indian country, in whole or in part belonging to or in lawful possession of a white person, and whether the same be consumed or not, shall be punishable by imprisonment at hard labor for not more than twenty-one years nor less than two years.

Arson.
Mar. 27, 1854, c. 26, s. 4, v. 10, p. 270.
Sec. 2143, R.S.

---

[1] U. S. *v.* Kagama, 118 U. S., 375; U. S. *v.* Thomas, 151 U. S., 577; Ex parte Crow Dog, 109 U. S., 556; In re Mayfield, 141 U. S., 107; Famous Smith *v.* U. S., 151 U. S., 50. For cases not falling within the scope of the act of March 3, 1885, see 1 Gould and Tucker, 499, 500; 2 Ibid, 192.

The supreme court of the District of Columbia has jurisdiction of an offense committed by one Indian upon another Indian when committed outside the Indian country. In re Wolf, 27 Fed. Rep., 60. The prohibition against the jurisdiction of the United States courts to try an Indian for an offense committed on another Indian applies only when the offense is committed in the Indian country. When the Indian commits a crime outside the Indian country (although that crime may be on another Indian) he is, like any other person, amenable to the criminal laws of the place where the crime is committed. Pablo *v.* People, 46 Pac. Rep., 636.

The power of Congress to regulate the intercourse between the inhabitants of the United States and the Indian tribes therein is not limited by State lines or governments, but may be exercised and enforced wherever the subject—Indian tribes—exists. U. S. *v.* Bridleman, 7 Fed. Rep., 894; U. S. *v.* Earl, 17; Ibid, 75. In the exercise of its constitutional power to regulate intercourse with the Indian tribes, Congress may define and punish crimes committed by white men upon the person or property of an Indian, and vice versa, within as well as without the limits of a State. U. S. *v.* Martin, 14 Fed. Rep., 817; U. S. *v.* Renfrew, 41 Pac. Rep., 161.

Rape.
Jan. 15, 1897, s. 5, v. 29, p. 487.

1992. Any Indian who shall commit the offense of rape within the limits of any Indian reservation shall be punished by imprisonment at the discretion of the court. *Section 5, act of January 15, 1897 (29 Stat. L., 487).*

Horse stealing, etc., in Indian Territory.
Feb. 15, 1888, v. 25, p. 33.
Punishment.

1993. Any person hereafter convicted in the United States courts having jurisdiction over the Indian Territory or parts thereof, of stealing any horse, mare, gelding, filly, foal, ass, or mule, when said theft is committed in the Indian Territory, shall be punished by a fine of not more than one thousand dollars, or by imprisonment not more than fifteen years, or by both such fine and imprisonment, at the discretion of the court. *Act of February 15, 1888 (25 Stat. L., 33).*

Robbery and burglary.
Punishment.
Sec. 2, *ibid.*
Offenses upon Indians, etc.
Pending trials.

1994. Any person hereafter convicted of any robbery or burglary in the Indian Territory shall be punished by a fine of not exceeding one thousand dollars, or imprisonment not exceeding fifteen years, or both, at the discretion of the court: *Provided*, That this act shall not be so construed as to apply to any offense committed by one Indian upon the person or property of another Indian, or so as to repeal any former act in relation to robbing the mails or robbing any person of property belonging to the United States: *And provided further*, That this act shall not affect or apply to any prosecution now pending, or the prosecution of any offense already committed. *Section 2, ibid.*

Repealing clause; larceny excepted.
Sec. 3, *ibid.*

1995. All acts and parts of acts inconsistent with this act are hereby repealed: *Provided, however*, That all such acts and parts of acts shall remain in force for the punishment of all persons who have heretofore been guilty of the crime of larceny in the Indian Territory. *Section 3, ibid.*

Reparation for injured property.
June 30, 1834, c. 161, s. 16, v. 4, p. 731.
Sec. 2154, R.S.

1996. Whenever, in the commission, by a white person, of any crime, offense, or misdemeanor, within the Indian country, the property of any friendly Indian is taken, injured, or destroyed, and a conviction is had for such crime, offense, or misdemeanor, the person so convicted shall be sentenced to pay to such friendly Indian to whom the property may belong, or whose person may be injured, a sum equal to twice the just value of the property so taken, injured, or destroyed.

Payment where the offender is unable to make same.
June 30, 1834, c. 161, s. 16, v. 4, p. 731.
Sec. 2155, R.S.

1997. If such offender shall be unable to pay a sum at least equal to the just value or amount, whatever such payment shall fall short of the same shall be paid out of the Treasury of the United States. If such offender can not be apprehended and brought to trial, the amount of such property shall be paid out of the Treasury. But no Indian shall be entitled to any payment out of the Treasury of the United States for any such property if he, or any of the nation to which he belongs, have sought private revenge, or have attempted to obtain satisfaction by any force or violence.

Injuries to property by Indians.
June 30, 1834, c. 161, s. 17, v. 4, p. 731; Feb. 28, 1859, c. 66, s. 8, v. 11, p. 401.
Sec. 2156, R.S.

1998. If any Indian, belonging to any tribe in amity with the United States, shall, within the Indian country, take or destroy the property of any person lawfully within such country, or shall pass from Indian country into any State or Territory inhabited by citizens of the United States, and there take, steal, or destroy, any horse, or other property, belonging to any citizen or inhabitant of the United States, such citizen or inhabitant, his representative, attorney, or agent, may make application to the proper superintendent, agent, or subagent, who, upon being furnished with the necessary documents and proofs, shall, under the direction of the President, make application to the nation or tribe to which such Indian shall belong, for satisfaction; and if such nation or tribe shall neglect or refuse to make satisfaction, in a reasonable time not exceeding twelve months, such superintendent, agent, or subagent shall make return of his doings to the Commissioner of Indian Affairs, that such further steps may be taken as shall be proper, in the opinion of the President, to obtain satisfaction for the injury.

Penalty for timber depredations.
June 4, 1888, v. 25, p. 166.
Sec. 5388, R.S.

Extended to Indian lands.

1999. Every person who unlawfully cuts, or aids or is employed in unlawfully cutting, or wantonly destroys or procures to be wantonly destroyed, any timber standing upon the land of the United States which, in pursuance of law, may be reserved or purchased for military or other purposes, or upon any Indian reservation, or lands belonging to or occupied by any tribe of Indians under authority of the United States, shall pay a fine of not more than five hundred dollars or be imprisoned not more than twelve months, or both, in the discretion of the court.[1] *Act of June 4, 1888 (25 Stat. L., 166).*

---

[1] The act of June 4, 1888, prohibiting the cutting of timber on Indian lands, is operative upon the Osage Reservation, and in respect to the Osage Indians. Labadie *v.* U. S., 51 Pac. Rep., 666. The act also applies to an Indian sustaining tribal relations who cuts timber for speculative purposes. Ibid.

Indians occupying reservations, the title to which is in the United States subject to their occupancy, have no right to cut and remove the dead and fallen timber thereon for the purpose of sale alone; such timber, where not used by the Indians for fuel or for agricultural purposes connected with the occupation of the land, being the property of the United States. XIX Opin. Att. Gen., 194.

Indian lands. Disposal of dead and fallen timber.
Feb. 16, 1889, v. 25, p. 673.

2000. The President of the United States may from year to year, in his discretion, under such regulations as he may prescribe, authorize the Indians residing on reservations or allotments, the fee to which remains in the United States, to fell, cut, remove, sell, or otherwise dispose of the dead timber standing or fallen, on such reservation or allotment, for the sole benefit of such Indian or Indians. But whenever there is reasonable cause to believe that such timber has been killed, burned, girdled, or otherwise injured for the purpose of securing its sale under this act, then in that case such authority shall not be granted.[1] *Act of February 16, 1889 (25 Stat. L., 673).*

Removal of persons.
June 30, 1834, c. 161, s. 10, v. 4, p. 730.
Sec. 2147, R.S.

2001. The superintendent of Indian affairs, and the Indian agents and subagents, shall have authority to remove from the Indian country all persons found therein contrary to law; and the President is authorized to direct the military force to be employed in such removal.[2]

Penalty for return.
Aug. 18, 1856, c. 128, s. 2, v. 11, p. 80.
Sec. 2148, R.S.

2002. If any person who has been removed from the Indian country shall thereafter at any time return or be found within the Indian country, he shall be liable to a penalty of one thousand dollars.

---

[1] A contract by an Indian to cut and deliver to a purchaser a certain quantity of dead timber from a reservation, "more or less," or "about," and which is approved by the President under the act of February 16, 1889, limits the quantity to which the purchaser can obtain title thereunder to that stated; allowance being made only for immaterial and accidental variation. U. S. *v.* Pine River Logging Co., 90 Fed. Rep., 907. The timber on Indian reservations belongs to the United States, and, in the absence of legislative authority, the Indians have no authority to cut or dispose of it. Ibid. The act empowering the President to authorize Indians to cut and remove from their reservations "dead timber" includes in that designation trees still living, but vitally injured, so that they will die in a short time, but not living and uninjured trees merely because they stand among trees a large proportion of which are dead. Ibid. It is not unlawful for an Indian having a contract, approved by the President, to cut and deliver a certain quantity of dead timber from a reservation, to permit other Indians to cut and deliver timber thereunder in his name. Ibid.

[2] Under section 2147, Revised Statutes, authorizing the use of the military in the removal from the Indian country of "persons found therein contrary to law," *held* that the President was authorized to direct that a company of United States troops be stationed in the Indian Territory near the Kansas line to act as a patrol, and to apprehend and return within that line any and all lawless persons, guilty of crimes committed in Kansas, who have escaped from justice into the Indian country. Dig. Opin. J. A. G. par. 1505.

Under the Constitution, the acts of Congress, and the regulations adopted by the Indian department, the power of the Commissioner of Indian Affairs and the agent acting under him and by his direction in removing any one not a member of an Indian tribe is a matter intrusted to the discretion of the Commissioner, and is not reviewable. Adams *v.* Freeman, 50 Pac. Rep., 135.

An order from a State court restraining an Indian agent from ousting trespassers from an Indian reservation should be disregarded as without jurisdiction. XX Opin. Att. Gen., 245.

An Indian agent has no authority forcibly to eject persons from land not within an Indian reservation, although it is inclosed in allotments made to Indians in fulfillment of a treaty stipulation, and may be restrained by injunction from so ejecting one who, before such allotment, entered the land as a homestead and made valuable improvements thereon. La Chapelle *v.* Bubb, 2 Fed. Rep., 545.

Removal from reservations.
June 12, 1858, c. 155, s. 2, v. 11, p. 332.
Sec. 2149, R.S.

2003. The Commissioner of Indian Affairs is authorized and required, with the approval of the Secretary of the Interior, to remove from any tribal reservation any person being therein without authority of law, or whose presence within the limits of the reservation may, in the judgment of the Commissioner, be detrimental to the peace and welfare of the Indians; and may employ for the purpose such force as may be necessary to enable the agent to effect the removal of such person.

Employment of military force in apprehending persons violating the law.
June 30, 1834, c. 161, ss. 21, 23, v. 4, p. 732.
Sec. 2150, R.S.

2004. The military forces of the United States may be employed in such manner and under such regulations as the President may direct—

First. In the apprehension of every person who may be in the Indian country in violation of law; and in conveying him immediately from the Indian country, by the nearest convenient and safe route, to the civil authority of the Territory or judicial district in which such person shall be found, to be proceeded against in due course of law;

Second. In the examination and seizure of stores, packages, and boats, authorized by law;

Third. In preventing the introduction of persons and property into the Indian country contrary to law; which persons and property shall be proceeded against according to law;

Fourth. And also in destroying and breaking up any distillery for manufacturing ardent spirits set up or continued within the Indian country.[1]

---

[1] Under section 2150, Revised Statutes, a military commander may be authorized and directed by the President to arrest by military force and deliver to the proper civil authorities for trial any white persons or Indians who may be in the Indian country engaged in furnishing liquor to Indians in violation of law, as also to prevent by military force the entry into such country of persons designing to introduce liquor therein contrary to law. *Held* that this authority to *prevent* was clearly an authority to *arrest* where arrests were found necessary to restrain persons attempting to introduce liquor or other inhibited property. Dig. Opin. J. A. G., par. 1506.

The troops of the United States can not be employed in the Indian Territory for the purpose of assisting in the preservation of the peace and the arrest of bandits and outlaws unless they are trespassing upon Indian country, or absconding offenders within the provisions of section 2152 of the Revised Statutes. XXI Opin. Att. Gen., 72.

Whatever may be the rule in time of war and in the presence of actual hostilities, military officers can no more protect themselves than civilians for actual wrongs committed in time of peace under orders emanating from a source which is itself without authority in the premises. Hence a military officer seizing liquors supposed to be in Indian country when they are not is liable to an action as a trespasser. Bates *v.* Clark, 95 U. S., 204.

Officers of the Army making arrests under section 23 of the act of June 30, 1834 (4 Stat. L., 732; sec. 2150, Revised Statutes), act as officers of civil law. To justify such arrests there must be strong probable cause. *In re* Carr, 3 Sawyer, 316.

The troops of the United States can not be employed in the Indian Territory to aid in the preservation of the peace and in the arrest of alleged "outlaws" and "bandits" unless such persons are trespassing, or are absconding offenders within the provisions of section 2152, Revised Statutes. XXI Opin. Att. Gen., 72.

Detention of persons apprehended by the military.
Sec. 23, *ibid.*
Sec. 2151, R.S.

2005. No person apprehended by military force under the preceding section shall be detained longer than five days after arrest and before removal. All officers and soldiers who may have any such person in custody shall treat him with all the humanity which the circumstances will permit.

Arrest of absconding Indians guilty of crime.
June 30, 1834, c. 161, s. 19, v. 4, p. 732.
Sec. 2152, R.S.

2006. The superintendents, agents, and subagents shall endeavor to procure the arrest and trial of all Indians accused of committing any crime, offense, or misdemeanor, and of all other persons who may have committed crimes or offenses within any State or Territory, and have fled into the Indian country, either by demanding the same of the chiefs of the proper tribe, or by such other means as the President may authorize. The President may direct the military force of the United States to be employed in the apprehension of such Indians, and also in preventing or terminating hostilities between any of the Indian tribes.[1]

Marshals to execute process in.
June 4, 1888, v. 25, p. 167.

2007. After the passage of this act any United States marshal is hereby authorized and required, when necessary to execute any process connected with any criminal proceeding issued out of the circuit or district court of the United States for the district of which he is marshal, or by any commissioner of either of said courts, to enter the Indian Territory, and to execute the same therein in the same manner that he is now required by law to execute like processes in his own district. *Act of June 4, 1888* (*25 Stat. L., 167*).

Executing process.
June 14, 1858, c. 163, s. 3, v. 11, p. 363.
Sec. 2153, R.S.

2008. In executing process in the Indian country, the marshal may employ a posse comitatus, not exceeding three persons in any of the States respectively, to assist in executing process by arresting and bringing in prisoners from the Indian country, and allow them three dollars for each day in lieu of all expenses and services.

Superintendents, etc., authorized to take depositions.
June 30, 1834, c. 161, s. 18, v. 4, p. 732.
Sec. 2157, R.S.

2009. The superintendents, agents, and subagents within their respective districts are authorized and empowered to take depositions of witnesses touching any depredations, within the purview of the three preceding sections, and to administer oaths to the deponents.

---

[1] *Held* that under section 2152, Revised Statutes, the military forces may, by the authority of the President, be employed to assist in making the arrest of Indians concerned in the killing of cattle and committing of depredations on the frontier, provided their offenses were committed in the Indian country or by Indians under the legal charge of an Indian agent. Dig. Opin. J. A. G., par. 1507.

Held that in the execution of process of arrest under the act of March 3, 1885 (rendering Indians amenable to the criminal laws of the Territories), the military may, by direction of the President, legally be employed to aid the civil officials in such arrests, such employment being expressly authorized by section 2152, Revised Statutes. Ibid., par. 490.

2010. All officers and agents of the Army and Indian Bureaus are prohibited, except in a case specially directed by the President, from granting permission in writing or otherwise to any Indian or Indians on any reservation to go into the State of Texas under any pretext whatever; and any officer or agent of the Army or Indian Bureau who shall violate this provision shall be dismissed from the public service. And the Secretary of the Interior is hereby directed and required to take at once such other reasonable measures as may be necessary in connection with said prohibition to prevent said Indians from entering said State. *Sec. 4, act of May 11, 1880 (21 Stat. L., 132).*

Army officers etc., prohibited from giving permission to Indians to go into the State of Texas.
Sec. 4, May 11, 1880, v. 21, p. 132.

THE INDIAN POLICE.

Par.
2011. Purpose of employment.
2012. Preference in appointment to allottees.

Par.
2013. Crimes against Indian police.
2014. Assault upon United States officials.

2011. Pay of Indian police: For the services of not exceeding four hundred and thirty privates at five dollars per month each, and not exceeding fifty officers at eight dollars per month each, of Indian police, to be employed in maintaining order and prohibiting illegal traffic in liquor on the several Indian reservations, thirty thousand dollars: *Provided*, That Indians employed at agencies in any capacity shall not be construed as part of agency employees named in section five of the act making appropriations for the Indian service for the fiscal year eighteen hundred and seventy-six, approved March third, eighteen hundred and seventy-five.[1] *Act of May 27, 1878 (20 Stat. L., 86).*

The Indian police.
May 27, 1878, v. 20, p. 86.

---

[1] The establishment of Indian police has been authorized by the several acts of appropriation since that of March 27, 1868 (20 Stat. L. 86). The detachments of this force authorized by the Secretary of the Interior to be maintained at the several Indian reservations are employed, under the direction of the respective Indian agents, in the preservation of order and in the execution of the laws relating to the management of Indians and the government of the Indian country.

The powers and duties of the Indian police authorized by the act of May 15, 1886, can not be exercised outside the reservation to which they may be assigned. XVIII Opin. Att. Gen., 440.

A member of the Indian police is not an officer of the United States within the meaning of the first clause of section 5398 of the Revised Statutes, imposing a penalty for resisting any officer of the United States in serving a writ or process; but such police are included among the other persons who may be authorized to serve writs or process within the last clause of the section. U. S. *v.* Mullin, 71 Fed. Rep., 682; in re Garrett, ibid. The written order of an Indian agent, made in pursuance of the duty of the Government to protect the Indians in the use of their reserva-

Preference to allottees in employment of police.
Feb. 8, 1887, s. 5, v. 24, p. 390.

2012. Hereafter in the employment of Indian police, or any other employees in the public service among any of the Indian tribes or bands affected by this act, and where Indians can perform the duties required, those Indians who have availed themselves of the provisions of this act and become citizens of the United States shall be preferred. *Sec. 5, act of February 8, 1887 (24 Stat. L., 390).*

Crimes against Indian police to be tried in district courts.
Mar. 2, 1887, v. 24, p. 464.

2013. Immediately upon and after the passage of this act any Indians committing against the person of any Indian policeman appointed under the laws of the United States, or any Indian United States deputy marshal while lawfully engaged in the execution of any United States process, or lawfully engaged in any other duty imposed upon such policeman or marshal by the laws of the United States, any of the following crimes, namely, murder, manslaughter, or assault with intent to kill, within the Indian Territory, shall be subject to the laws of the United States relating to such crimes, and shall be tried by the district court of the United States exercising criminal jurisdiction where said offense was committed, and shall be subject to the same penalties as are all other persons charged with the commission of said crimes, respectively; and the said courts are hereby given jurisdiction in all such cases. *Act of March 2, 1887 (24 Stat. L., 464).*

Assault, etc., upon United States officials; penalty.
June 9, 1888, v. 25, p. 178.

2014. Any Indian hereafter committing against the person of any Indian agent or policeman appointed under the laws of the United States, or against any Indian United States deputy marshal, posse comitatus, or guard, while lawfully engaged in the execution of any United States process, or lawfully engaged in any other duty imposed upon such agent, policeman, deputy marshal, posse comitatus, or guard by the laws of the United States, any of the following crimes, namely, murder, manslaughter, or assault with intent to murder, assault, or assault and battery, or who shall in any manner obstruct

---

tions, is a legal or judicial writ or process within the meaning of section 5398 of the Revised Statutes. In re Garrett, 71 ibid., 682.

ALASKA.

Alaska, though unorganized as a Territory, and constituting a military department, is no more under military government or jurisdiction than is any other Territory or any State of the United States.[a] Dig. Opin. J. A. G., 147, par. 2. For the penal code of Alaska see act of March 3, 1899 (30 Stat. L., 1253).

---

[a] "It is a mistake to suppose that the Territory of Alaska is under military rule any more than any other part of the country, except as to the introduction of spirituous liquors, and the making of arrests for violations of" the existing law regulating their introduction and disposition (see Indian Country, sec. 1, note), in cases of which arrests "the military really act as civil officers and in subordination to the civil law." In re Carr, 3 Sawyer, 318.

by threats or violence any person who is engaged in the service of the United States in the discharge of any of his duties as agent, policeman, or other officer aforesaid, within the Indian Territory, or who shall hereafter commit either of the crimes aforesaid, in said Indian Territory, against any person who, at the time of the commission of said crime, or at any time previous thereto, belonged to either of the classes of officials hereinbefore named, shall be subject to the laws of the United States relating to such crimes, and shall be tried by the district court of the United States exercising criminal jurisdiction where such offense was committed, and shall be subject to the same penalties as are all other persons charged with the commission of said crimes, respectively; and the said courts are hereby given jurisdiction in all such cases. *Act of June 9, 1888 (25 Stat. L., 178).*

Jurisdiction of district court.

CHAPTER XXXIX.

THE EMPLOYMENT OF MILITARY FORCE.

Par.
2015–2022. Invasion and insurrection.
2023–2028. Employment of troops on Indian reservations.
2029–2050. Suspension of intercourse.
2051–2065. Civil rights.
2066, 2067. The elective franchise.
2068. The public health.
2069–2071. The public lands.
2072. Obstructing the mails.
2073. Contracts and combinations in restraint of trade.
2074. Northern Pacific Railroad.
2075. Union and Central Pacific Railroads.
Par.
2076. Atlantic and Pacific Railroad.
2077. Southern Pacific Railroad.
2078. Enforcement of law in the Hawaiian Islands.
2079–2089. Neutrality.
2090–2093. Extradition.
2094–2102. Guano islands.
2103. Restriction on employment of military force.
2104–2111. Treason.
2112. The law of war—Military occupation.

INSURRECTION AND INVASION.

Par.
2015. Power of Congress over the militia.
2016. Insurrections.
2017. The same, against the United States.
2018. The same, against a State.
Par.
2019. Proclamation to insurgents.
2020. Invasion.
2021. Militia, how apportioned.
2022. Militia subject to Articles of War.

Power of Congress over militia.
Constitution, art. I, s. 8, p. 15.

2015. The Congress shall have power * * *
To provide for calling forth the militia to execute the laws of the Union, to suppress insurrections, and repel invasions.[1] *Constitution of the United States, Article I, section 8, paragraph 15.*

Power to suppress insurrection.
Apr. 20, 1871, c. 22, s. 3, v. 17, p. 14.
Sec. 5299, R. S.

2016. Whenever insurrection, domestic violence, unlawful combinations, or conspiracies in any State so obstructs or hinders the execution of the laws thereof, and of the United States, as to deprive any portion or class of the people of such State of any of the rights, privileges, or immunities, or protection, named in the Constitution and secured by the laws for the protection of such rights, privileges, or immunities, and the constituted authorities of such State are unable to protect, or, from any cause, fail in or refuse protection of the people in such rights, such facts shall be deemed a denial by such State of the equal protection of the laws to which they are entitled under the Constitution of the United States; and in all such cases, or whenever any such insurrection, violence, unlawful combination or conspiracy, opposes or obstructs the laws of the United States, or the due execution thereof, or impedes or obstructs the due course of justice under the same, it shall be lawful for the President, and it shall be his duty, to take such measures, by the employment of the militia or the land and naval forces of the United States, or of either, or by other means, as he may deem necessary, for the suppression of such insurrection, domestic violence, or combinations.[1]

---

[1] For enactments of Congress in pursuance of the authority above conferred see the chapter entitled THE MILITIA. See also subsequent paragraphs of this chapter.

Insurrection against the Government of the United States.
July 29, 1861, c. 25, s. 1, v. 12, p. 281.
Sec. 5298, R.S.

2017. Whenever, by reason of unlawful obstructions, combinations, or assemblages of persons, or rebellion against the authority of the Government of the United States, it shall become impracticable, in the judgment of the President, to enforce, by the ordinary course of judicial proceedings, the laws of the United States within any State or Territory, it shall be lawful for the President to call forth the militia of any or all the States, and to employ such parts of the land and naval forces of the United States as he may deem necessary to enforce the faithful execution of the laws of the United States, or to suppress such rebellion, in whatever State or Territory thereof the laws of the United States may be forcibly opposed, or the execution thereof forcibly obstructed.[2]

---

[1] The power to enforce its laws and to execute its functions in all places does not derogate from the power of the State to execute its laws at the same time and in the same places. The one does not exclude the other except where both can not be executed at the same time. In that case the words of the Constitution itself show which is to yield; "this Constitution and the laws of the United States which shall be made in pursuance thereof; * * * shall be the supreme law of the land."

Although no State could establish and maintain a permanent military government, yet it may use its military power to put down an armed insurrection too strong to be controlled by the civil authority. The State must determine for itself what degree of force the crisis demands. Luther *v.* Borden, 7 How., 1. See also XVI Opin. Att. Gen., 162. See also note to paragraph 2018, *post.*

[2] The National Government has the right to use physical force in any part of the United States to compel obedience to its laws, and to carry into execution the powers conferred upon it by the Constitution. "We hold it to be an incontrovertible principle that the Government of the United States may, by means of physical force, exercised through its official agents, execute on every foot of American soil the powers and functions that belong to it." Ex parte Siebold, 100 U. S., 371, 395; U. S. *v.* Neagle, 135 U. S., 1, 60; Logan *v.* U. S., 144, U. S., 263, 294; in re Waite, 81 Fed. Rep., 359; U. S. *v.* Debs, 164, U. S. 724; U. S. *v.* Cassidy, 67 Fed. Rep., 698.

An officer who, in the performance of what he conceives to be his official duties, transcends his authority, and invades private rights, is answerable therefor to the Government under whose appointment he acts, and to individuals injured by his action; but where there is no criminal intent, he is not liable to answer the criminal process of another Government. In re Lewis, 83 Fed. Rep., 159; in re Fair et al. 100, ibid. 149.

An officer of the Army of the United States whilst serving in the enemy's country during the rebellion was not liable to an action in the courts of that country for inju-

Insurrection against a State.
Feb. 28, 1795, c. 36, s. 1, v. 1, p. 424; Mar. 3, 1807, c. 39, v. 2, p. 443.
Sec. 5297 R.S.

2018. In case of an insurrection in any State against the government thereof, it shall be lawful for the President, on application of the legislature of such State, or of the executive, when the legislature can not be convened, to call forth such number of the militia of any other State or States, which may be applied for, as he deems sufficient to suppress such insurrection; or, on like application, to employ, for the same purposes, such part of the land or naval forces of the United States as he deems necessary.[1]

Proclamation to insurgents to disperse.

2019. Whenever, in the judgment of the President, it becomes necessary to use the military forces under this

---

ries resulting from his military orders or acts; nor could he be required by a civil tribunal to justify or explain them upon any allegation of the injured party that they were not justified by military necessity. He was subject to the laws of war, and amenable only to his own Government. Dorr *v.* Johnson, 100 U. S., 158; Luther *v.* Borden, 7 Howard, 1, 46.

As a necessary incident of the power to declare and prosecute war, the Federal Government has a right to transport troops through and over the territory of any State of the Union. Crandall *v.* Nevada, 6 Wall., 35. See also XVI Opin. Att. Gen., 162; XVII ibid., 242, 333; XIX ibid., 293, and note to par. 2072, *post.*

[1] Under article 4, section 4, of the Constitution, the Army may be employed to protect a State from "invasion" or "domestic violence" only by order of the President, made "on application of the legislature, or of the executive when the legislature can not be convened." A military commander, of whatever rank or command, can have no authority, except by the order thus made of the President, to furnish troops to a governor or other functionary of a State, to aid him in making arrests or establishing law and order. Dig. Opin. J. A. G., par. 483.

The proviso of the Constitution, "when the legislature can not be convened," may be said to mean when it is not in session, or can not, by the State law, be assembled forthwith or in time to provide for the emergency. When it is in session, or can legally and at once be called together, it will not be lawful for the President to employ the army on the application merely of the governor. Ibid., par. 484.

Where calls are made upon the President, under section 4, article 4, of the Constitution, by two persons, each claiming to be governor of the same State, to protect the State against domestic violence, it of necessity devolves upon the President to determine, before giving the required aid, which of such persons is the lawful incumbent of the office. XIV Opin. Att. Gen., 391; VII ibid., 8; Prize Cases, 2 Black, 97; Dodge *v.* Woolsey, 18 Howard, 373; Ex parte Milligan, 4 Wallace, 129.

A military force employed according to article 4, section 4, of the Constitution, is to remain under the direction and orders of the President as Commander in Chief and his military subordinates; it can not be placed under the direct orders or exclusive disposition of the governor of the State. Dig. Opin. J. A. G., par. 485.

In all cases of civil disorders or domestic violence it is the duty of the Army to preserve an attitude of indifference and inaction till ordered to act by the President, by the authority of the Constitution or of section 2150, 5297, or 5298, Revised Statutes, or other public statute. An officer or soldier may, indeed, interfere to arrest a person in the act of committing a crime, or to prevent a breach of the peace in his presence, but this he does as a citizen and not in his military capacity. Any combined effort by the military, as such, to make arrests or otherwise prevent breaches of the peace or violations of law in civil cases, except by the order of the President or the requirement of a United States official authorized to require their services on a posse comitatus, must necessarily be illegal. In a case of civil disturbance in violation of the laws of a State, a military commander can not volunteer to intervene with his command without incurring a personal responsibility for his acts. In the absence of the requisite orders he may not even march or array his command for the purpose of exerting a moral effect or any effect in terrorem; such a demonstration, indeed, could only compromise the authority of the United States, while insulting the sovereignty of the State. Ibid., par. 488.

See also General Orders, No. 26, Adjutant-General's Office, of 1894 (A. R., 487), for instructions as to the use of the military force in support of the civil authority.

title, the President shall forthwith, by proclamation, command the insurgents to disperse and retire peaceably to their respective abodes, within a limited time.[1]

July 29, 1861, c. 25, s. 2, v. 12, p. 282.
Sec. 5300, R.S.

2020. Whenever the United States are invaded, or are in imminent danger of invasion from any foreign nation or Indian tribe, or of rebellion against the authority of the Government of the United States, it shall be lawful for the President to call forth such number of the militia of the State or States, most convenient to the place of danger, or scene of action, as he may deem necessary to repel such invasion, or to suppress such rebellion, and to issue his orders for that purpose to such officers of the militia as he may think proper.[2]

Orders of President calling forth militia in case of invasion, etc.
Feb. 28, 1795, c. 36, s. 1, v. 1, p. 424.
Martin *v.* Mott, 12 Wh., 19; McCall's Case, 5 Phila., 259.
Sec. 1642, R.S.

2021. When the militia of more than one State is called into the actual service of the United States by the President, he shall apportion them among such States according to representative population.

Militia, how apportioned.
July 17, 1862, c. 201, s. 1, v. 12, p. 597.
Sec. 1643, R.S.

2022. The militia, when called into the actual service of the United States for the suppression of rebellion against and resistance to the laws of the United States, shall be subject to the same rules and articles of war as the regular troops of the United States.

Subject to Articles of War.
Feb. 28, 1795, c. 36, s. 4, v. 1, p. 424; July 29, 1861, c. 25, s. 3, v. 12, p. 282.
Sec. 1644, R.S.

---

[1] See XVII Opin. Att. Gen., 333. Section 2 of the act of May 4, 1880 (21 Stat. L., 113), contained the requirement "that no money appropriated in this act is appropriated or shall be paid for the subsistence, equipment, transportation, or compensation of any portion of the Army of the United States to be used as a police force to keep the peace at the polls at any election held within any State: *Provided*, That nothing in this provision shall be construed to prevent the use of troops to protect against domestic violence in each of the States on application of the legislature thereof or of the executive when the legislature can not be convened."

[2] The act of February 28, 1795 (1 Stat. L., 424), authorizing the President, under certain circumstances, to call out the militia, is constitutional, and the President is the final judge of the emergency justifying such a call. Martin *v.* Mott, 12 Wheat., 19. By this act the power of deciding whether the exigency had arisen upon which the Government of the United States is bound to interfere is given to the President. He is to act upon the application of the legislature, or of the executive, and consequently he must determine what body of men constitute the legislature, and who is the governor before he can act. The fact that both parties claim the right to the government can not alter the case, for both can not be entitled to it. If there is an armed conflict, like the one of which we are speaking, it is a case of domestic violence, and one of the parties must be in insurrection against the lawful government. And the President must, of necessity, decide which is the government, and which party is unlawfully arrayed against it, before he can perform the duty imposed upon him by the act of Congress. Luther *v.* Borden, 7 How., I, II.

In the case of Houston *v.* Moore (5 Wheat., 1), it was decided that although a militiaman who refused to obey the orders of the President calling him into the public service was not, in the sense of the act of February 28, 1795, "employed in the service of the United States," so as to be subject to the Rules and Articles of War, yet that he was liable to be tried for the offense under the fifth section of the same act, by court-martial called under the authority of the United States. The great doubt in that case was whether the delinquent was liable to be tried for the offense by a court-martial organized under State authority. Martin *v.* Mott, 12 Wheat., 19, 34.

EMPLOYMENT OF TROOPS ON INDIAN RESERVATIONS.

Par.
2023. Removal of trespassers.
2024. Penalty for return.
2025. Removal from reservation.
Par.
2026. Employment of military force.
2027. Detention of arrested persons.
2028. Arrest of absconding Indians.

Removal of persons from Indian reservations.
June 30, 1834, c. 161, s. 10, v. 4, p. 730.
Sec. 2147, R.S.

2023. The superintendent of Indian affairs, and the Indian agents and subagents, shall have authority to remove from the Indian country[1] all persons found therein contrary to law; and the President is authorized to direct the military force to be employed in such removal.

Penalty for return.
Aug. 18, 1856, c. 128, s. 2, v. 11, p. 80.
Sec. 2148, R.S.

2024. If any person who has been removed from the Indian country shall thereafter at any time return or be found within the Indian country, he shall be liable to a penalty of one thousand dollars.[1]

Removal from reservations.
June 12, 1858, c. 155, s. 2, v. 11, p. 332.
Sec. 2149, R.S.

2025. The Commissioner of Indian Affairs is authorized and required, with the approval of the Secretary of the Interior, to remove from any tribal reservation any person being therein without authority of law, or whose presence, within the limits of the reservation may, in the judgment of the Commissioner, be detrimental to the peace and welfare of the Indians; and may employ for the purpose such force as may be necessary to enable the agent to effect the removal of such person.

Employment of the military in apprehending persons violating the law.
June 30, 1834, c. 161, ss. 21, 23, v. 4. p. 732.
Sec. 2150, R.S.

2026. The military forces of the United States may be employed in such manner and under such regulations as the President may direct[2]—

First. In the apprehension of every person who may be in the Indian country in violation of law; and in conveying him immediately from the Indian country, by the nearest convenient and safe route, to the civil authority of the Territory or judicial district in which such person shall be found to be proceeded against in due course of law;

Second. In the examination and seizure of stores, packages, and boats, authorized by law;

Third. In preventing the introduction of persons and property into the Indian country contrary to law; which persons and property shall be proceeded against according to law;

---

[1] The definition of the term "Indian country" contained in section 1 of the act of June 30, 1834 (4 Stat. L., 729), though not incorporated in the Revised Statutes, and though repealed simultaneously with their enactment, may be referred to in order to determine what is meant by the term when used in statutes; and it applies to all the country to which the Indian title has not been extinguished within the limits of the United States, whether within a reservation or not, and whether acquired before or since the passage of the act or not. Ex parte Crow Dog, 109 U. S., 556.

[2] See U. S. *v.* Boyd, 83 Fed. Rep., 547; U. S. *v.* Crook, 5 Dillon, 453, 467.

Fourth. And also in destroying and breaking up any distillery for manufacturing ardent spirits set up or continued within the Indian country.

2027. No person apprehended by military force under the preceding section shall be detained longer than five days after arrest and before removal. All officers and soldiers who may have any such person in custody shall treat him with all the humanity which the circumstances will permit.[1]

Detention of persons apprehended by the military.
Sec. 23, *ibid.*
Sec. 2151, R.S.

2028. The superintendents, agents, and sub-agents shall endeavor to procure the arrest and trial of all Indians accused of committing any crime, offense, or misdemeanor, and of all other persons who may have committed crimes or offenses within any State or Territory, and have fled into the Indian country, either by demanding the same of the chiefs of the proper tribe, or by such other means as the President may authorize. The President may direct the military force of the United States to be employed in the apprehension of such Indians, and also in preventing or terminating hostilities between any of the Indian tribes.[2]

Arrest of absconding Indians guilty of crime.
June 30, 1834, c. 161, s. 19, v. 4, p. 732.
Sec. 2152, R.S.

SUSPENSION OF INTERCOURSE.

Par.
2029. Suspension of commercial intercourse.
2030. The same in loyal States.
2031. Extent of prohibition.
2032. The same, licenses to trade.
2033. Appointment of customs officers.
2034. Trading without license.
2035. Investigation of frauds.
2036. Confiscation of property.
2037. Procedure in prosecutions.
2038. Property taken in inland waters.
2039. Procedure in admiralty.
2040. Prohibition on transportation of goods.

Par.
2041. Prohibition on trade in captured property.
2042. Change in port of entry.
2043. Removal of custom-house.
2044. Enforcement of preceding sections.
2045. Districts closed to entry.
2046. Vessels in addition to revenue cutters.
2047. Forfeiture of vessels.
2048. Refusal of clearance.
2049. Bond on clearance.
2050. Liens on condemned vessels.

2029. Whenever the President, in pursuance of the provisions of this Title, has called forth the militia to suppress combinations against the laws of the United States, and to cause the laws to be duly executed, and the insurgents shall

Suspension of commercial intercourse.
July 13, 1861, c. 3, s. 5, v. 12, p. 257; ibid., c. 32, v. 12, p. 284.
Sec. 5301, R. S.

---

[1] See, also, for authority to use military force in connection with Indian reservations and for the protection of Indians, sections 2118, 2147, 2150, 2151, and 2152, Revised Statutes, and the chapter entitled THE INDIANS, ETC.

[2] The officer who makes the arrest can not detain before removal for more than five days. He must remove or discharge the prisoner, or is liable as a tort feasor for false imprisonment, but may rearrest. While in military custody the prisoner is a civil and not a military prisoner, and can not be compelled to labor. The custodian is liable as a tort feasor for so compelling him. In re John A. Carr, 3 Sawyer, 316; Waters *v.* Campbell, 5 ibid., 17.

have failed to disperse by the time directed by the President, and when the insurgents claim to act under the authority of any State or States, and such claim is not disclaimed or repudiated by the persons exercising the functions of government in such State or States, or in the part or parts thereof in which such combination exists, and such insurrection is not suppressed by such State or States, or whenever the inhabitants of any State or part thereof are at any time found by the President to be in insurrection against the United States, the President may, by proclamation, declare that the inhabitants of such State, or of any section or part thereof where such insurrection exists, are in a state of insurrection against the United States; and thereupon all commercial intercourse by and between the same and the citizens thereof and the citizens of the rest of the United States shall cease and be unlawful so long as such condition of hostility shall continue; and all goods and chattels, wares and merchandise, coming from such State or section into the other parts of the United States, or proceeding from other parts of the United States to such State or section, by land or water, shall, together with the vessel or vehicle conveying the same, or conveying persons to or from such State or section, be forfeited to the United States.[1]

In loyal States. July 2, 1864, c. 225, s. 5, v. 13, p. 376. **Sec. 5302, R. S.**

2030. Whenever any part of a State not declared to be in insurrection is under the control of insurgents, or is in dangerous proximity to places under their control, all commercial intercourse therein and therewith shall be subject to the prohibitions and conditions of the preceding section for such time and to such extent as shall become necessary to protect the public interests, and be directed by the Secretary of the Treasury, with the approval of the President.

To whom prohibition shall extend. Sec. 4, *ibid.* **Sec. 5303, R. S.**

2031. The provisions of this Title in relation to commercial intercourse shall apply to all commercial intercourse by and between persons residing or being within districts within the lines of national military occupation in the States or parts of States declared in insurrection, whether with each other or with persons residing or being within districts declared in insurrection and not within those lines; and all persons within the United States, not native or naturalized citizens thereof, shall be subject to the same prohibitions, in all commercial intercourse with inhabitants of States or parts of States declared in insurrection, as citizens of States not declared to be in insurrection.

---

[1] The Reform, 2 Wall., 258; ibid., 3 Wall., 617; U. S. *v.* Weed, 5 Wall., 62; The Hampton, 5 Wall., 372; The Ouachita Cotton, 6 Wall., 521; The Venice, 2 Wall., 258; Cutner *v.* U. S., 17 Wall., 517.

Commercial intercourse; to what extent permitted.
July 13, 1861, c. 3, s. 5, v. 12, p. 257; July 2, 1864, c. 225, s. 9, v. 13, p. 377.
Sec. 5304, R.S.

2032. The President may, in his discretion, license and permit commercial intercourse with any part of such State or section, the inhabitants of which are so declared in a state of insurrection, so far as may be necessary to authorize supplying the necessities of loyal persons residing in insurrectionary States, within the lines of actual occupation by the military forces of the United States, as indicated by published order of the commanding general of the department or district so occupied; and, also, so far as may be necessary to authorize persons residing within such lines to bring or send to market in the loyal States any products which they shall have produced with their own labor or the labor of freedmen, or others employed and paid by them, pursuant to rules relating thereto, which may be established under proper authority. And no goods, wares, or merchandise shall be taken into a State declared in insurrection, or transported therein, except to and from such places and to such monthly amounts as shall have been previously agreed upon, in writing, by the commanding general of the department in which such places are situated, and an officer designated by the Secretary of the Treasury for that purpose. Such commercial intercourse shall be in such articles and for such time and by such persons as the President, in his discretion, may think most conducive to the public interest; and, so far as by him licensed, shall be conducted and carried on only in pursuance of rules and regulations prescribed by the Secretary of the Treasury.[1]

Appointment and compensation of officers.
July 13, 1861, c. 3, s. 5, v. 12, p. 267; June 30, 1864, c. 171, s. 28, v. 13, p. 218.
Sec. 5305, R.S.

2033. The Secretary of the Treasury may appoint such officers at places where officers of the customs are not now authorized by law as may be needed to carry into effect such licenses, rules, and regulations. In all cases where officers of the customs, or other salaried officers, are appointed by him to carry into effect such licenses, rules, and regulations, such officer shall be entitled to receive one thousand dollars a year for his services, in addition to his salary or compensation under any other law. But the aggregate compensation of any such officer shall not exceed the sum of five thousand dollars in any one year.

---

[1] The Sea Lion, 5 Wall., 630; The Ouachita Cotton, 6 Wall., 521; Coppell *v.* Hall, 7 Wall., 542; McKee *v.* U. S., 8 Wall., 163; U. S. *v.* Lane, 8 Wall., 185.

Trading without license, etc.
July 2, 1864, c. 225, s. 10, v. 13, p. 377.
Sec. 5306, R.S.

2034. Every officer of the United States, civil, military, or naval, and every sutler, soldier, marine, or other person, who takes or causes to be taken into a State declared to be in insurrection, or to any other point to be thence taken into such State, or who transports or sells, or otherwise disposes of therein, any goods, wares, or merchandise whatsoever, except in pursuance of license and authority of the President, as provided in this title, or who makes any false statement or representation upon which license and authority is granted for such transportation, sale, or other disposition, or who, under any license or authority obtained, willfully and knowingly transports, sells, or otherwise disposes of any other goods, wares, or merchandise than such as are in good faith so licensed and authorized, or who willfully and knowingly transports, sells, or disposes of the same, or any portion thereof, in violation of the terms of such license or authority, or of any rule or regulation prescribed by the Secretary of the Treasury concerning the same, or who is guilty of any act of embezzlement, of willful misappropriation of public or private money or property, of keeping false accounts, or of willfully making any false returns, shall be deemed guilty of a misdemeanor, and shall be fined not more than five thousand dollars, and imprisoned in the penitentiary not more than three years. Violations of this section shall be cognizable before any court, civil or military, competent to try the same.

Investigations to detect frauds.
Ibid.
Sec. 5307, R.S.

2035. It shall be the duty of the Secretary of the Treasury, from time to time, to institute such investigations as may be necessary to detect and prevent frauds and abuses in any trade or transactions which may be licensed between inhabitants of loyal States and of States in insurrection. And the agents making such investigations shall have power to compel the attendance of witnesses, and to make examinations on oath.

Confiscation of property employed in aid of insurrection.
Aug. 6, 1861, c. 60, s. 1, v. 12, p. 319.
Sec. 5308, R.S.

2036. Whenever during any insurrection against the Government of the United States, after the President shall have declared by proclamation that the laws of the United States are opposed, and the execution thereof obstructed, by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the power vested in the marshals by law, any person, or his agent, attorney, or employé, purchases or acquires, sells or gives, any property of whatsoever kind or description, with intent to use or employ the same, or suffers the same to be used or employed in aiding, abetting, or promoting such insurrection or resistance to the laws, or any person engaged therein; or being the owner of any such property, knowingly uses or employs, or consents to such use or employment of the same, all such property shall be lawful subject of prize and capture wherever found; and it shall be the duty of the President to cause the same to be seized, confiscated, and condemned.[1]

Proceedings, where had.

Aug. 6, 1861, c. 60, s. 2, v. 12, p. 319; Feb. 27, 1877, c. 69, v. 19, p. 253.

Sec. 5309, R.S.

2037. Such prizes and capture shall be condemned in the district or circuit court of the United States having jurisdiction of the amount, or in admiralty in any district in which the same [may] be seized, or into which they may be taken and proceedings first instituted.

Property taken on inland waters.

July 2, 1864, c. 225, s. 7, v. 13, p. 377.

Sec. 5310, R.S.

2038. No property seized or taken upon any of the inland waters of the United States by the naval forces thereof shall be regarded as maritime prize; but all property so seized or taken shall be promptly delivered to the proper officers of the courts.

How proceedings shall be instituted.

Aug. 6, 1861, c. 68, s. 3, v. 12, p. 319.

Sec. 5311, R.S.

2039. The Attorney-General, or the attorney of the United States for any judicial district in which such property may at the time be, may institute the proceedings of condemnation, and in such case they shall be wholly for the benefit of the United States; or any person may file an information with such attorney, in which case the proceedings shall be for the use of such informer and the United States in equal parts.[2]

Prohibition upon transportation of goods to aid insurrection.

May 20, 1862, c. 81, s. 3, v. 12, p. 404.

Sec. 5312, R.S.

2040. The Secretary of the Treasury is authorized to prohibit and prevent the transportation in any vessel, or upon any railroad, turnpike, or other road or means of transportation within the United States, of any property, whatever may be the ostensible destination of the same, in all cases where there are satisfactory reasons to believe that such property is intended for any place in the possession or under the control of insurgents against the United States, or that there is imminent danger that such property will fall into the possession or under the control of such insurgents; and he is further authorized, in all cases where he deems it expedient so to do, to require reasonable security to be given that property shall not be transported to any place under insurrectionary control, and shall not, in any way, be used to give aid or comfort to such insurgents;

---

[1] Mrs. Alexander's Cotton, 2 Wall., 404; Union Ins. Co. *v.* U. S., 6 Wall., 759; Armstrong's Foundry, 6 Wall., 766; Morris's Cotton, 8 Wall., 507; U. S. *v.* Shares of Capital Stock, 5 Blatch., 231.

[2] Francis *v.* U. S., 5 Wall., 338; Confiscation Cases, 7 Wall., 454; Miller *v.* U. S., 11 Wall., 268; Tyler *v.* Defrees, 11 Wall., 331.

and he may establish all such general or special regulations as may be necessary or proper to carry into effect the purposes of this section; and if any property is transported in violation of this act, or of any regulation of the Secretary of the Treasury, established in pursuance thereof, or if any attempt shall be made so to transport any, it shall be forfeited.[1]

Prohibition upon trade in captured or abandoned property.
July 2, 1864, c. 325, s. 10, v. 13, p. 277.
Sec. 5313, R. S.

2041. All persons in the military or naval service of the United States are prohibited from buying or selling, trading, or in any way dealing in captured or abandoned property, whereby they shall receive or expect any profit, benefit, or advantage to themselves, or any other person, directly or indirectly connected with them; and it shall be the duty of such person whenever such property comes into his possession or custody, or within his control, to give notice thereof to some agent, appointed by virtue of this Title, and to turn the same over to such agent without delay. Any officer of the United States, civil, military, or naval, or any sutler, soldier, or marine, or other person who shall violate any provision of this section, shall be deemed guilty of a misdemeanor, and shall be fined not more than five thousand dollars, and imprisoned in the penitentiary not more than three years. Violations of this section shall be cognizable before any court, civil or military, competent to try the same.

Change of port of entry in case of insurrection.
July 13, 1861, c. 3, s. 1, v. 12, p. 255.
Sec. 5314, R. S.

2042. Whenever the President shall deem it impracticable, by reason of unlawful combinations of persons in opposition to the laws of the United States, to collect the duties on imports in the ordinary way, at any port of entry in any collection district, he may cause such duties to be collected at any port of delivery in the district until such obstruction ceases; in such case the surveyor at such port of delivery shall have the powers and be subject to all the obligations of a collector at a port of entry. The Secretary of the Treasury, with the approval of the President, shall also appoint such weighers, gaugers, measurers, inspectors, appraisers, and clerks as he may deem necessary, for the faithful execution of the revenue laws at such port of delivery, and shall establish the limits within which such port of delivery is constituted a port of entry. And all the provisions of law regulating the issue of marine papers, the coasting trade, the warehousing of imports, and the collection of duties, shall apply to the ports of entry thus constituted, in the same manner as they do to ports of entry established by law.

---

[1] Gay's Gold, 13 Wall., 358.

Removal of custom-house.
Sec. 2, *ibid.*, p. 256.
Mar. 3, 1875, c. 136, s. 2, v. 18, p. 469.
Sec. 5315, R.S.

2043. Whenever, at any port of entry, the duties on imports can not, in the judgment of the President, be collected in the ordinary way, or by the course provided in the preceding section, by reason of the cause mentioned therein, he may direct that the custom-house for the district be established in any secure place within the district, either on land or on board any vessel in the district, or at sea near the coast; and in such case the collector shall reside at such place, or on shipboard, as the case may be, and there detain all vessels and cargoes arriving within or approaching the district, until the duties imposed by law on such vessels and their cargoes are paid in cash. But if the owner or consignee of the cargo on board any vessel thus detained, or the master of the vessel, desires to enter a port of entry in any other district where no such obstructions to the execution of the laws exist, the master may be permitted so to change the destination of the vessel and cargo in his manifest; whereupon the collector shall deliver him a written permit to proceed to the port so designated. And the Secretary of the Treasury, with the approval of the President, shall make proper regulations for the enforcement on shipboard of such provisions of the laws regulating the assessment and collection of duties as in his judgment may be necessary and practicable.

Enforcement of preceding sections.
July 12, 1861, c. 3, s. 3, v. 12, p. 256.
Sec. 5316, R.S.

2044. It shall be unlawful to take any vessel or cargo detained under the preceding section from the custody of the proper officers of the customs, unless by process of some court of the United States; and in case of any attempt otherwise to take such vessel or cargo by any force, or combination, or assemblage of persons, too great to be overcome by the officers of the customs, the President, or such person as he shall have empowered for that purpose, may employ such part of the Army or Navy or militia of the United States, or such force of citizen volunteers as may be necessary, to prevent the removal of such vessel or cargo, and to protect the officers of the customs in retaining the custody thereof.

Entire district closed to entry.
Sec. 4, *ibid.*
Sec. 5317, R.S.

2045. Whenever, in any collection district, the duties on imports can not, in the judgment of the President, be collected in the ordinary way, nor in the manner provided by the three preceding sections, by reason of the cause mentioned in section fifty-three hundred and fourteen [Rev. Stat.],[1] the President may close the port of entry in that district; and shall in such case give notice thereof by proclamation. And thereupon all right of importation, warehousing, and other privileges incident to ports of entry shall cease and be discontinued at such port so closed until it is opened by the order of the President on the cessation of such obstructions. Every vessel from beyond the United States, or having on board any merchandise liable to duty, which attempts to enter any port which has been closed under this section, shall, with her tackle, apparel, furniture, and cargo, be forfeited.

---

[1] Paragraph 2042, *ante*.

Vessels in addition to revenue cutters may be employed.
Sec. 7, *ibid.*
Sec. 5318, R.S.

2046. In the execution of laws providing for the collection of duties on imports and tonnage, the President, in addition to the revenue cutters in service, may employ in aid thereof such other suitable vessels as may, in his judgment, be required.

Forfeiture of vessels belonging to citizens of insurrectionary States.
Ibid.
Sec. 5319, R.S.

2047. From and after fifteen days after the issuing of the proclamation, as provided in section fifty-three hundred and one [Rev. Stat.],[1] any vessel belonging in whole or in part to any citizen or inhabitant of such State or part of a State whose inhabitants are so declared in a state of insurrection, found at sea, or in any port of the rest of the United States, shall be forfeited.[2]

Refusal of clearance to vessels laden with suspected merchandise.
May 20, 1862, c. 81, s. 1, v. 12, p. 404.
Sec. 5320, R.S.

2048. The Secretary of the Treasury is authorized to refuse a clearance to any vessel or other vehicle laden with merchandise, destined for a foreign or domestic port, whenever he shall have satisfactory reason to believe that such merchandise, or any part thereof, whatever may be its ostensible destination, is intended for ports in possession or under control of insurgents against the United States; and if any vessel for which a clearance or permit has been refused by the Secretary of the Treasury, or by his order, shall depart or attempt to depart for a foreign or domestic port without being duly cleared or permitted, such vessel, with her tackle, apparel, furniture, and cargo, shall be forfeited.

Bond upon clearance.
Sec. 2, *ibid.*
Sec. 5321, R.S.

2049. Whenever a permit or clearance is granted for either a foreign or domestic port, it shall be lawful for the collector of the customs granting the same, if he deems it necessary, under the circumstances of the case, to require a bond to be executed by the master or the owner of the vessel, in a penalty equal to the value of the cargo, and with sureties to the satisfaction of such collector, that the cargo shall be delivered at the destination for which it is cleared or permitted, and that no part thereof shall be used in affording aid or comfort to any person or parties in insurrection against the authority of the United States.

---

[1] Paragraph 2029, *ante*.

[2] The Schooner Keeling, Blatch. Pr. Cas., 92.

Liens upon condemned vessels.
Mar. 3, 1863, c. 90, v. 12, p. 762.
Sec. 5322, R.S.

2050. In all cases wherein any vessel, or other property, is condemned in any proceeding by virtue of any laws relating to insurrection or rebellion, the court rendering judgment of condemnation shall, notwithstanding such condemnation, and before awarding such vessel, or other property, or the proceeds thereof, to the United States, or to any informer, first provide for the payment, out of the proceeds of such vessel, or other property, of any bona-fide claims which shall be filed by any loyal citizen of the United States, or of any foreign state or power at peace and amity with the United States, intervening in such proceeding, and which shall be duly established by evidence as a valid claim against such vessel, or other property, under the laws of the United States or any State thereof not declared to be in insurrection. No such claim shall be allowed in any case where the claimant has knowingly participated in the illegal use of such ship, vessel, or other property. This section shall extend to such claims only as might have been enforced specifically against such vessel, or other property, in any State not declared to be in insurrection, wherein such claim arose.[1]

CIVIL RIGHTS.

Par.
2051. Equal rights under the law.
2052. Property rights of citizens.
2053. Civil action for deprivation of rights.
2054. Conspiracy.
2055. Action to prevent conspiracy.
2056. District attorney to prosecute.
2057. Commissioners.
2058 Execution of warrants.

Par.
2059. Marshals to obey precepts.
2060. District attorneys, fees.
2061. Execution of process, fees.
2062. Speedy trial.
2063. Aid of military force.
2064. Peonage abolished in New Mexico.
2065. The same, enforcement.

Equal rights under the law.
May 31, 1870, c. 114, s. 16, v. 16, p. 144; Mar. 1, 1875, c. 114, s. 1, v. 18, p. 336.
Sec. 1977, R.S.

2051. All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

---

[1] The Hampton, 5 Wall., 372.

Rights of citizens in respect to real and personal property.
Apr. 9, 1866, c. 31, s. 1, v. 14, p. 27.
Sec. 1978, R.S.

2052. All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

Civil action for deprivation of rights.
Apr. 20, 1871, c. 22, s. 1, v. 17, p. 13.
Sec. 1979, R.S.

2053. Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Conspiracy.
July 31, 1861, c. 33, v. 12, p. 284; Apr. 20, 1871, c. 22, s. 2, v. 17, p. 13; Mar. 1, 1875, c. 114, s. 2, v. 18, p. 336.
Sec. 1980, R.S.

2054. First. If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

Second. If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

Third. If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice-President, or as a member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

Action for neglect to prevent conspiracy.
Apr. 20, 1871, c. 22, s. 6, v. 17, p. 15.
Sec. 1981, R.S.

2055. Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in the preceding section, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding five thousand dollars damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

District attorney, etc., to prosecute.
Apr. 9, 1866, c. 31, s. 4, v. 14, p. 28; May 31, 1870, c. 114, s. 9, v. 16, p. 142.
Sec. 1982, R.S.

2056. The district attorneys, marshals, and deputy marshals, the commissioners appointed by the circuit and territorial courts, with power to arrest, imprison, or bail offenders, and every other officer who is especially empowered by the President, are authorized and required, at the expense of the United States, to institute prosecutions against all persons violating any of the provisions of chapter seven of the Title "CRIMES," and to cause such persons to be arrested, and imprisoned or bailed, for trial before the court of the United States or the Territorial court having cognizance of the offense.

Commissioners.
Apr. 9, 1866, c. 13, s. 4, v. 14, p. 28; May 31, 1870, c. 114, s. 9, v. 16, p. 142.
Sec. 1983, R.S.

2057. The circuit courts of the United States and the district courts of the Territories, from time to time, shall increase the number of commissioners, so as to afford a speedy and convenient means for the arrest and examination of persons charged with the crimes referred to in the preceding section; and such commissioners are authorized and required to exercise all the powers and duties conferred on them herein with regard to such offenses in like manner as they are authorized by law to exercise with regard to other offenses against the laws of the United States.

They may appoint persons to execute warrants, etc.
Apr. 9, 1866, c. 31, s. 5, v. 14, p. 28; May 31, 1870, c. 114, s. 10, v. 16, p. 142.
Sec. 1984, R.S.

2058. The commissioners authorized to be appointed by the preceding section are empowered, within their respective counties, to appoint, in writing, under their hands, one or more suitable persons, from time to time, who shall execute all such warrants or other process as the commissioners may issue in the lawful performance of their duties, and the persons so appointed shall have authority to summon and call to their aid the bystanders or posse comitatus of the proper county, or such portion of the land or naval forces of the United States, or of the militia, as may be necessary to the performance of the duty with which they are charged; and such warrants shall run and be executed anywhere in the State or Territory within which they are issued.

Marshal to obey precepts, etc.
Apr. 9 1866, c. 31, s. 5, v. 14, p. 28; May 31, 1870, c. 114, s. 10, v. 16, p. 142.
Sec. 1985, R.S.

2059. Every marshal and deputy marshal shall obey and execute all warrants or other process, when directed to him, issued under the provisions hereof.

Fees of district attorney, etc.
Apr. 9, 1866, c. 31, s. 7, v. 14, p. 29; May 31, 1871, c. 114, s. 12, v. 16, p. 143.
Sec. 1986, R.S.

2060. The district attorneys, marshals, their deputies, and the clerks of the courts of the United States and Territorial courts shall be paid for their services, in cases under the foregoing provisions, the same fees as are allowed to them for like services in other cases; and where the proceedings are before a commissioner he shall be entitled to a fee of ten dollars for his services in each case, inclusive of all services incident to the arrest and examination.

Of persons appointed to execute process, etc.
Apr. 9, 1866, c. 31, s. 7, v. 14, p. 29; May 31, 1870, c. 114, s. 12, v. 16, p. 143.
Sec. 1987, R. S.

2061. Every person appointed to execute process under section nineteen hundred and eighty-four [Rev. Stat.][1] shall be entitled to a fee of five dollars for each party he may arrest and take before the commissioner, with such other fees as may be deemed reasonable by the commissioner for any additional services necessarily performed by him, such as attending at the examination, keeping the prisoner in custody, and providing him with food and lodging during his detention, and until the final determination of the commissioner; such fees to be made up in conformity with the fees usually charged by the officers of the courts of justice within the proper district or county, as near as may be practicable, and paid out of the Treasury of the United States on the certificate of the judge of the district within which the arrest is made, and to be recoverable from the defendant as part of the judgment in case of conviction.

Speedy trial.
Apr. 9, 1866, c. 31, s. 8, v. 14, p. 29.
Sec. 1988, R. S.

2062. Whenever the President has reason to believe that offenses have been or are likely to be committed against the provisions of chapter seven of the Title CRIMES, within any judicial district, it shall be lawful for him, in his discretion, to direct the judge, marshal, and district attorney of such district to attend at such place within the district, and for such time, as he may designate, for the purpose of the more speedy arrest and trial of persons so charged, and it shall be the duty of every judge or other officer, when any such requisition is received by him, to attend at the place and for the time therein designated.

Aid of the military and naval forces.
Apr. 8, 1866, c. 31, s. 9, v. 14, p. 29; May 31, 1870, c. 114, s. 13, v. 16, p. 143.
Sec. 1989, R. S.

2063. It shall be lawful for the President of the United States, or such person as he may empower for that purpose, to employ such part of the land or naval forces of the United States, or of the militia, as may be necessary to aid in the execution of judicial process issued under any of the preceding provisions, or as shall be necessary to prevent the violation and enforce the due execution of the provisions of this Title.[2]

Peonage abolished.
Mar. 2, 1867, c. 187, s. 1, v. 14, p. 546.
Sec. 1990, R. S.

2064. The holding of any person to service or labor under the system known as peonage is abolished and forever prohibited in the Territory of New Mexico, or in any other Territory or State of the United States; and all acts, laws, resolutions, orders, regulations, or usages of the Territory of New Mexico, or of any other Territory or State, which have heretofore established, maintained, or enforced, or by virtue of which any attempt shall hereafter be made to establish, maintain, or enforce, directly or indirectly, the voluntary or involuntary service or labor of any persons as peons, in liquidation of any debt or obligation, or otherwise, are declared null and void.

---

[1] Paragraph 2058, *ante*.

[2] This power is not repealed or abridged by the posse comitatus act (act of June 18, 1878, 20 Stat. L., 152). XIX Opin. Att. Gen., 570.

Foregoing section, how enforced.
Mar. 2, 1867, c. 187, s. 2, v. 14, p. 546.
Sec. 1991, R. S.

2065. Every person in the military or civil service in the Territory of New Mexico shall aid in the enforcement of the preceding section.

THE ELECTIVE FRANCHISE.

Interference with freedom of elections by officers of Army or Navy.
Feb. 25, 1865, c. 52, s. 1, v. 13, p. 437.
Sec. 2003, R. S.

2066. No officer of the Army or Navy of the United States shall prescribe or fix or attempt to prescribe or fix by proclamation, order, or otherwise the qualifications of voters in any State, or in any manner interfere with the freedom of any election in any State or with the exercise of the free right of suffrage in any State.

Race, color, or previous condition not to affect the right to vote.
May 31, 1870, c. 114, s. 1, v. 16, p. 140.
Sec. 2004, R. S.

2067. All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision shall be entitled and allowed to vote at all such elections without distinction of race, color, or previous condition of servitude, any constitution, law, custom, usage, or regulation of any State or Territory or by or under its authority to the contrary notwithstanding.[1]

THE PUBLIC HEALTH.

Quarantine. State health laws to be observed by United States officers, etc.
Feb. 23, 1799, c. 12, s. 1, v. 1, p. 619.
Sec. 4792, R. S.

2068. The quarantines and other restraints established by the health laws of any State respecting any vessels arriving in or bound to any port or district thereof shall be duly observed by the officers of the customs revenue of the United States, by the masters and crews of the several revenue cutters, and by the military officers commanding in any fort or station upon the seacoast; and all such officers of the United States shall faithfully aid in the execution of such quarantines and health laws according to their respective powers and within their respective precincts, and as they shall be directed from time to time by the Secretary of the Treasury. But nothing in this Title shall enable any State to collect a duty of tonnage or impost without the consent of Congress.[1]

---

[1] Sections 2002 and 2005–2031, inclusive, of the Revised Statutes were repealed by the act of February 8, 1894 (28 Stat. L., 36). 2 Abb. U. S., 120; McKay *v.* Campbell, 1 Saw., 374; U. S. *v.* Reese et al., 92 U. S., 214; U. S. *v.* Cruikshank et al., 92 U. S., 542.

THE PUBLIC LANDS.

The public lands, felling timber, unlawful inclosures.
Sec. 2460, R.S.

2069. The President is authorized to employ so much of the land and naval forces of the United States as may be necessary effectually to prevent the felling, cutting down, or other destruction of the timber of the United States in Florida; and to prevent the transportation or carrying away any such timber as may be already felled or cut down; and to take such other and further measures as may be deemed advisable for the preservation of the timber of the United States in Florida.

Inclosure of public lands.
Feb. 25, 1885, s. 5, v. 23, p. 322.

2070. The President is hereby authorized to take such measures as shall be necessary to remove and destroy any unlawful inclosures of any of said [public] lands, and to employ civil or military force as may be necessary for that purpose.[2] *Sec. 5, act of February 25, 1885 (23 Stat. L., 322).*

Removal of trespassers.
s. 1, Mar. 3, 1807, v. 2, p. 445.

2071. That if any person or persons shall, after the passing of this act, take possession of, or make a settlement on any lands ceded or secured to the United States, by any treaty made with a foreign nation, or by a cession from any State to the United States, which lands shall not have been previously sold, ceded, or leased by the United States, or the claim to which lands, by such person or persons, shall not have been previously recognized and confirmed by the United States; or if any person or persons shall cause such lands to be thus occupied, taken possession of, or settled; or shall survey, or attempt to survey, or cause to be surveyed, any such lands; or designate any boundaries thereon, by marking trees, or otherwise, until thereto duly authorized by law; such offender or offenders, shall forfeit all his or their right, title, and claim, if any he hath, or they have, of whatsoever nature or kind the same shall or may be, to the lands aforesaid, which he or they shall have taken possession of, or settled, or cause to be occupied, taken possession of, or settled, or which he or they shall have surveyed, or attempt to survey, or cause to be surveyed, or the boundaries thereof he or they shall have designated, or cause to be designated, by marking trees or otherwise. And it shall moreover be lawful for the President of the United States, to direct the marshal, or officer acting as marshal, in the manner hereinafter directed, and also to take such other measures, and to employ *such military force as he* may judge necessary and proper, to remove from lands ceded, or secured to the United States, by treaty, or cession as aforesaid, any person or persons who shall hereafter take possession of the same, or make, or attempt to make, a settlement thereon, until thereunto authorized by law. * * * *Sec. 1, act of March 3, 1807 (2 Stat. L., 445).*

---

[1] Gibbons *v.* Ogden, 9 Wh., 1; Passenger Cases, 7 How., 406.

[2] This statute appears as section 5 of the act of February 25, 1885 (23 Stat. L., 322), entitled "An act to prevent unlawful occupancy of the public lands." See Campbell *v.* U. S., 66 Fed. Rep., 101; XVIII, Opin. Att. Gen., 434. There is no implied license to use for pasture purposes public lands reserved for the preservation of forests to the destruction or injury of such forests. U. S. *v.* Tygh Valley Land and Live Stock Co., 76 Fed. Rep., 693.

OBSTRUCTING THE MAILS.

Obstructing the mail: penalty.
June 8, 1872, c. 335, s. 241, v. 17, p 312.
Sec. 3995, R. S.

2072. Any person who shall knowingly and willfully obstruct or retard the passage of the mail, or any carriage, horse, driver, or carrier carrying the same, shall, for every such offense, be punishable by a fine of not more than one hundred dollars.[1]

CONTRACTS AND COMBINATIONS IN RESTRAINT OF TRADE.

Trusts, etc., in the States, in restraint of trade, etc., illegal.
Persons combining, guilty of misdemeanor.
July 2, 1890, v. 26, p. 209.

2073. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Penalty.

Persons attempting to monopolize, etc., guilty of misdemeanor.

SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five

Penalty.

---

[1] The entire strength of the nation may be used to enforce, in any part of the land, the full and free exercise of all national powers and the security of all rights intrusted by the Constitution to its care. The strong arm of the National Government may be put forth to brush away all obstructions to the freedom of interstate commerce or the transportation of the mails. If the emergency arise, the Army of the nation and all its militia are at the service of the nation to compel obedience to its laws. In re Debs, 158 U. S., 564, 582; In re Neagle, 135 U. S., 1; Ex parte Siebold, 100 U. S., 371, 395; U. S. *v.* Kirby, 7 Wall., 482.

thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Trusts, etc., in Territories or District of Columbia illegal.

SEC. 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Persons engaged therein guilty of misdemeanor.

Penalty.

Jurisdiction of United States circuit courts.

Prosecuting officers.

SEC. 4. The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition, and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

Procedure.

Hearing, etc.

Temporary restraining order, etc.

Process.

SEC. 5. Whenever it shall appear to the court before which any proceeding under section four of this act may be pending that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpœnas to that end may be served in any district by the marshal thereof.

Trust, etc., property in transit.

SEC. 6. Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section one of this act, and being in the course of transportation from one State

Forfeiture, seizure, and condemnation.

to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

Damages.

Litigation.

Recovery.

SEC. 7. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover three fold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

SEC. 8. That the word "person," or "persons," wherever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country. *Act of July 2, 1890 (26 Stat. L., 209).*

NORTHERN PACIFIC RAILROAD.

Northern Pacific Railroad.
July 2, 1864, s. 11, v. 13, p. 370.

2074. That said Northern Pacific Railroad, or any part thereof, shall be a post route and a military road, subject to the use of the United States, for postal, military, naval, and all other Government service, and also subject to such regulations as Congress may impose restricting the charges for such government transportation. *Sec. 11, act of July 2, 1864 (13 Stat. L., 370).*

THE UNION AND CENTRAL PACIFIC RAILROADS.

The Union and Central Pacific railroads.
s. 6, July 1, 1862, v. 12, p. 493.

2075. That the grants aforesaid are made upon condition that said company shall pay said bonds at maturity, and shall keep said railroad and telegraph line in repair and use, and shall at all times transmit dispatches over said telegraph line, and transport mails, troops, and munitions of war, supplies, and public stores upon said railroad for the Government, whenever required to do so by any department thereof, and that the Government shall at all times have the preference in the use of the same for all the purposes aforesaid. *Sec. 6, act of July 11, 1862 (12 Stat. L., 493).*

THE ATLANTIC AND PACIFIC RAILROAD.

The Atlantic and Pacific Railroad.
s. 11, July 27, 1866, v. 14, p. 297.

2076. That said Atlantic and Pacific Railroad, or any part thereof, shall be a post route and military road, subject to the use of the United States for postal, military, naval, and all other Government service, and also subject to such regulations as Congress may impose restricting the charges for such Government transportation. *Sec. 11, act of July 27, 1866 (14 Stat. L., 297).*

The Southern Pacific Railroad.
s. 18, July 27, 1866, v. 14, p. 299.

2077. That the Southern Pacific Railroad, a company incorporated under the laws of the State of California, is hereby authorized to connect with the said Atlantic and Pacific Railroad, formed under this act, at such point near the boundary line of the State of California as they shall deem most suitable for a railroad line to San Francisco, and shall have a uniform gauge and rate of freight or fare with said road; and in consideration thereof, to aid in its construction, shall have similar grants of land, subject to all the conditions and limitations herein provided, and shall be required to construct its road on the like regulations, as to time and manner, with the Atlantic and Pacific Railroad herein provided for. *Sec. 18, act of July 27, 1866 (14 Stat. L., 299).*

ENFORCEMENT OF LAW IN THE HAWAIIAN ISLANDS.

Enforcement of laws in the Hawaiian Islands.
s. 67, Apr. 30, 1900, v. 31, p. 153.

2078. That the governor shall be responsible for the faithful execution of the laws of the United States and of the Territory of Hawaii within the said Territory, and whenever it becomes necessary he may call upon the commanders of the military and naval forces of the United States in the Territory of Hawaii, or summon the posse comitatus, or call out the militia of the Territory to prevent or suppress lawless violence, invasion, insurrection, or rebellion in said Territory, and he may, in case of rebellion or invasion, or imminent danger thereof, when the public safety requires it, suspend the privilege of the writ of habeas corpus, or place the Territory, or any part thereof, under martial law until communication can be had with the President and his decision thereon made known. *Sec. 67, act of April 30, 1900 (31 Stat. L., 153).*

NEUTRALITY.[1]

Par.
2079. Accepting a foreign commission.
2080. Enlisting in foreign service.
2081. Arming vessels against people at peace with the United States.
2082. Arming vessels to cruise against citizens of the United States.
2083. Augmenting force of foreign vessels of war.
2084. Military expeditions against people at peace with the United States.
2085. Enforcement of foregoing provisions.
2086. Compelling foreign vessels to depart.
2087. Armed vessels to give bond on clearance.
2088. Detention by collectors of customs.
2089. Construction of this title.

Accepting a foreign commission. Apr. 20, 1818, c. 88, s. 1, v. 3, p. 447. Sec. 5281, R. S.

2079. Every citizen of the United States who, within the territory or jurisdiction thereof, accepts and exercises a commission to serve a foreign prince, state, colony, district, or people, in war, by land or by sea, against any prince, state, colony, district, or people with whom the United States are at peace, shall be deemed guilty of a high misdemeanor, and shall be fined not more than two thousand dollars and imprisoned not more than three years.[2]

---

[1] The neutrality act has been uniformly treated, by the Executive Departments and by judges of the United States courts, as embracing warlike enterprises set on foot in this country against a friendly power at peace with all the world. U. S. *v.* Sullivan, 9 N. Y. Leg. Obs., 257.

Neutrality, strictly speaking, consists in abstinence from any participation in a public, private, or civil war, and in impartiality of conduct toward both parties; but the maintenance unbroken of peaceful relations between two powers when the domestic peace of one of them is disturbed is not neutrality in the sense in which the word is used when the disturbance has acquired such head as to have demanded the recognition of belligerency; and, as mere matter of municipal administration, no nation can permit unauthorized acts of war within its territory in infraction of its sovereignty, while good faith toward friendly nations requires their prevention. The Three Friends, 166 U. S., 1.

The organization, in one country or State, of combinations to aid or abet rebellion in another, or in any other way to act on its political institutions, is a violation of national amity and comity, and an act of semihostile interference with the affairs of other peoples. * * * But there is no municipal law to forbid and punish such combinations, either in the United States or Great Britain. VIII Opin. Att. Gen., 216.

The policy of this country is, and ever has been, a perfect neutrality and noninterference in the quarrels of other nations. III Opin. Att. Gen., 739.

The act of April 30, 1818, like that of June 5, 1794, was intended to secure, beyond all risk of violation, the neutrality and pacific policy which they consecrate as our fundamental law. Ibid., 741.

In the absence of express authority from Congress, an officer of the Army can not accept remuneration from a foreign power, in return for military or other public service rendered, without a violation of Art. I, sec. 9, par. 7, of the Constitution. (*a*) Nor can such an officer (in the absence of such authority) properly be granted a leave of absence for the purpose of rendering foreign service, even without compensation, since such a proceeding would be contrary to the spirit and intent of the laws relating to the Army, which clearly contemplate that the services of its officers shall be rendered to the United States. Dig. Opin. J. A. G., par. 1375.

[2] The enlistment of seamen or others for marine service on Mexican steamers in New York, they not being Mexicans transiently within the United States, is a clear violation of this section, and the persons enlisted, as well as the officers enlisting them, are liable to the penalties thereby incurred. IV Opin. Att. Gen., 336.

This section applies to foreign consuls raising troops in the United States for the military service of Great Britain. VII ibid., 367. It does not apply to those who go

---

[a] See U. S. *v.* Landers, 2 Otto., 79; XIII Opin. Att. Gen., 199.

Enlisting in foreign service.
Sec. 2, *ibid.*, p. 448.
Sec. 5282, R.S.

2080. Every person who, within the territory or jurisdiction of the United States, enlists or enters himself, or hires or retains another person to enlist or enter himself, or to go beyond the limits or jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign prince, state, colony, district, or people, as a soldier, or as a marine or seaman, on board of any vessel of war, letter of marque, or privateer, shall be deemed guilty of high misdemeanor, and shall be fined not more than one thousand dollars, and imprisoned not more than three years.[1]

Arming vessels against people at peace with the United States.
Sec. 3, *ibid.*
Sec. 5283, R.S.

2081. Every person who, within the limits of the United States, fits out and arms, or attempts to fit out and arm, or procures to be fitted out and armed, or knowingly is concerned in the furnishing, fitting out, or arming, of any vessel, with intent that such vessel shall be employed in the service of any foreign prince or state, or of any colony, district, or people, to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, or who issues or delivers a commission within the territory or jurisdiction of the United States, for any vessel, to the intent that she may be so employed, shall be deemed guilty of a high misdemeanor, and shall be fined not more than ten thousand dollars and imprisoned not more than three years. And every such vessel, with her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores which may have been procured for the building and equipment thereof, shall be forfeited; one-half to the use of the informer and the other half to the use of the United States.[2]

---

abroad for foreign enlistment, or to those who transport such persons. U. S. *v.* Kazinski, 2 Sprague, 7. The enlistment must be made within the territory of the United States, and the section does not apply to one who goes abroad with intent there to enlist. Ibid. The words "soldier" and "enlist" as used in this section are to be understood in their technical sense. Ibid.; U. S. *v.* O'Brien, 75 Fed. Rep., 900.

[1] See note to section 2079, p. 816.

[2] To constitute an offense under this section, the vessel must be fitted out and armed with the specific intent. U. S. *v.* Skinner, 1 Brun. Coll. Cases. It is not necessary that the vessel should be armed or manned for the purpose of committing hostilities, before she leaves the United States, if it is the intention that she shall be so fitted subsequently (The City of Mexico, 28 F. R., 148). or if the separate parts of the expedition are to be united on the high seas. U. S. *v.* The Mary N. Hogan, 18 Fed. Rep., 529, and 20 ibid., 50; The Carondelet, 37 Fed. Rep., 799; The Lancaster, 85 ibid., 760; U. S. *v.* Quincy, 6 Peters, 445.

The status of the insurgent party will be regarded by the courts as it is regarded by the political or executive departments of the United States at the time of the commission of the alleged offense. Gelston *v.* Hoyt, 3 Wheat., 246, 324; U. S. *v.* Palmer, ibid., 610, 625; Kennett *v.* Chambers, 14 How., 38; Wharton, Int. Law Dig. §§ 551,

Arming vessel to cruise against citizens of the United States.
Sec. 4, *ibid.*
Sec. 5284, R.S.

2082. Every citizen of the United States who, without the limits thereof, fits out and arms, or attempts to fit out and arm, or procures to be fitted out and armed, or knowingly aids or is concerned in furnishing, fitting out, or arming any private vessel of war, or privateer, with intent that such vessel shall be employed to cruise or commit hostilities upon the citizens of the United States or their property, or who takes the command of or enters on board of any such vessel for such intent, or who purchases any interest in any such vessel, with a view to share in the profits thereof, shall be deemed guilty of a high misdemeanor, and fined not more than ten thousand dollars and imprisoned not more than ten years. And the trial for such offense, if committed without the limits of the United States, shall be in the district in which the offender shall be apprehended or first brought.

Augmenting force of foreign vessel of war.
Sec. 5, *ibid.*
Sec. 5285, R.S.

2083. Every person who, within the territory or jurisdiction of the United States, increases or augments, or procures to be increased or augmented, or knowingly is

---

552; U. S. *v.* Trumbull, 48 F. R., 99, 104. The word "people," as used in this section, is "one of the denominations applied by the act of Congress to a foreign power." U. S. *v.* Quincy, 6 Pet., 445.

I know of no law or regulation which forbids any person, or government, whether the political designation be real or assumed, from purchasing arms from the citizens of the United States and shipping them at the risk of the purchaser. X Opin. Att. Gen., 452. The sending of munitions of war from a neutral country to a belligerent port for sale, as articles of commerce , is unlawful only as subjecting such property to capture. The Santissima Trinidad, 7 Wheat., 283; The City of Mexico, 24 F. R., 924. It is the right of a belligerent to purchase goods and instruments of war in a neutral nation, but it may be denied by a law passed for such purpose. X Opin. Att. Gen., 61.

The provisions of this section do not apply to a vessel which receives arms and munition of war in this country, as cargo merely, with intent to carry them to a party of insurgents in a foreign country, but not with the intent that they shall constitute any part of the fittings or furnishings of the vessel herself. U. S. *v.* The Itata, 56 F. R., 608; U. S. *v.* 2,000 Cases of Rifles, ibid. A vessel is not liable to forfeiture under this section, nor is she liable to condemnation as piratical, on the ground that she is in the employ of an insurgent party which has not been recognized by the United States as having belligerent rights. U. S. *v.* The Itata, 56 F. R., 608; U. S. *v.* Weed, 5 Wall., 62; The Watchful, 6 Wall., 91.

In the case of the Horsa, Wiborg *v.* U. S., 163 U. S. 632, decided on appeal in the Supreme Court of the United States on May 25, 1896, it was held "that any combination of men organized to go to Cuba to make war upon its government, provided with arms and ammunition, constitutes a military expedition. It is not necessary that the men shall be drilled, put in uniform, or prepared for efficient service, nor that they shall have been organized as or according to the tactics or rules which relate to what is known as infantry, cavalry, or artillery. It is sufficient that they shall have combined and organized here to go there and make war on a foreign government, and to have provided themselves with the means of doing so. Whether such provision, as by arming, etc., is necessary need not to be decided in this case. Nor is it important that they intended to make war as an independent body or in connection with others. Where men go without such combination and organization to enlist as individuals in a foreign army, they do not constitute such military expedition, and the fact that the vessel carrying them might carry arms as merchandise would not be important." See also The Estrella, 4 Wh., 298; The Gran Para, 7 Wh., 471; The Santa Maria, 7 Wh., 490; The Monte Allegre, 7 Wh., 520; U. S. *v.* Reyburn, 6 Pet,. 352; U. S. *v.* Quincy, 6 Pet., 445; Wiborg *v.* U. S., 163, U. S. 632.

concerned in increasing or augmenting, the force of any ship of war, cruiser, or other armed vessel, which at the time of her arrival within the United States was a ship of war, or cruiser, or armed vessel, in the service of any foreign prince or state, or of any colony, district, or people, or belonging to the subjects or citizens of any such prince or state, colony, district, or people, the same being at war with any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, by adding to the number of the guns of such vessel, or by changing those on board of her for guns of a larger caliber, or by adding thereto any equipment solely applicable to war, shall be deemed guilty of a high misdemeanor, and shall be fined not more than one thousand dollars and be imprisoned not more than one year.[1]

Military expeditions against people at peace with the United States. Sec. 6, *ibid.*, p. 449. Sec. 5286, R.S.

2084. Every person who, within the territory or jurisdiction of the United States, begins, or sets on foot, or provides or prepares the means for, any military expedition or enterprise, to be carried on from thence against the territory or dominions of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, shall be deemed guilty of a high misdemeanor, and shall be fined not exceeding three thousand dollars, and imprisoned not more than three years.[2]

---

[1] The repair of Mexican war steamers in the port of New York, together with the augmenting their force by adding to the number of their guns, or by changing those originally on board for those of larger caliber, or by the addition of any equipment solely applicable to war, is a violation of this section. But the repair of their bottoms or copper, etc., does not constitute any increase or augmentation of force within the meaning of the act, and the steamers are not liable to seizure by any judicial process under it. IV Opin. Att. Gen., 336.

The taking on of a crew of American citizens, or of aliens domiciled in the United States would constitute a violation of this section. The Alerta, 9 Cranch, 359.

[2] When a party of insurgents, already organized and carrying on war against the government of a foreign country, send a vessel to procure arms and ammunition in the United States, the act of purchasing such arms and ammunition and placing them aboard the vessel is not within the scope of this section, which prescribes a penalty for every person who, within the limits of the United States, begins or sets on foot, or prepares or provides the means for any military expedition or enterprise "to be carried on from thence." Such expeditions and enterprises must originate within the jurisdiction of the United States, and the terms of the statute do not apply to an expedition originating within the territory of a foreign state. U. S. *v.* Trumbull, 48 Fed. Rep., 99. For liability of the officers of the ship, see U. S. *v.* Rand, 17 ibid., 142. See, also, Wiborg *v.* U. S., 163 U. S., 632; U. S. *v.* Ybanez, 53 Fed. Rep., 536; U. S. *v.* Pena, 69 ibid., 983; U. S. *v.* Hughes, 70 ibid., 972; U. S. *v.* Hart, 74 ibid., 724; U. S. *v* Nuñez, 82 ibid., 599; U. S. *v.* Murphy, 84 ibid., 609.

The transportation of goods for commercial purposes only, and the carriage of persons separately, though their individual design may be to enlist in a foreign strife, are not prohibited by our law, if the transportation is without any features of a military character. Indications of a military operation or of a military expedition are concert and unity of action, organization of men to act together, the presence of weapons, and some form of command or leadership. When these exist and are known to the persons engaged in the transportation, all who knowingly aid in such transportation for military purposes are liable under section 5286 of the Revised Statutes. U. S. *v.* Nuñez et al., 82 Fed. Rep., 599.

Enforcement of foregoing provisions,
Sec. 8, *ibid.*
Feb. 18, 1875, c. 80, v. 18, p. 320.
Sec. 5287, R.S.

2085. The district courts shall take cognizance of all complaints, by whomsoever instituted, in cases of captures made within the waters of the United States, or within a marine league of the coasts or shores thereof. In every case in which a vessel is fitted out and armed, or attempted to be fitted out and armed, or in which the force of any vessel of war, cruiser, or other armed vessel is increased or augmented, or in which any military expedition or enterprise is begun or set on foot, contrary to the provisions and prohibitions of this Title; and in every case of the capture of a vessel within the jurisdiction or protection of the United States as before defined; and in every case in which any process issuing out of any court of the United States is disobeyed or resisted by any person having the custody of any vessel of war, cruiser, or other armed vessel of any foreign prince or state, or of any colony, district, or people, or of any subjects or citizens of any foreign prince or state, or of any colony, district, or people, it shall be lawful for the President, or such other person as he shall have empowered for that purpose, to employ such part of the land or naval forces of the United States, or of the militia thereof, for the purpose of taking possession of and detaining any such vessel, with her prizes, if any, in order to the execution of the prohibitions and penalties of this Title, and to the restoring of such prizes in the cases in which restoration shall be adjudged; and also for the purpose of preventing the carrying on of any such expedition or enterprise from the territories or jurisdiction of the United States against the territories or dominions of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace.

Compelling foreign vessels to depart.
Apr. 20, 1818, c. 88, s. 9. v. 3, p. 449,
Sec. 5288, R.S.

2086. It shall be lawful for the President, or such person as he shall empower for that purpose, to employ such part of the land or naval forces of the United States, or of the militia thereof, as shall be necessary to compel any foreign vessel to depart the United States in all cases in which, by the laws of nations or the treaties of the United States, she ought not to remain within the United States.

Armed vessels to give bond on clearance.
Sec. 10, *ibid.*
Sec. 5289, R.S.

2087. The owners or consignees of every armed vessel sailing out of the ports of the United States, belonging wholly or in part to citizens thereof, shall, before clearing out the same, give bond to the United States, with sufficient sureties, in double the amount of the value of the vessel and cargo on board, including her armament, conditioned that the vessel shall not be employed by such owners to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace.[1]

Detention by collectors of customs.
Apr. 20, 1818, c. 88, s. 11, p. 450.
Sec. 5290, R.S.

2088. The several collectors of the customs shall detain any vessel manifestly built for warlike purposes, and about to depart the United States, the cargo of which principally consists of arms and munitions of war, when the number of men shipped on board, or other circumstances, render it probable that such vessel is intended to be employed by the owners to cruise or commit hostilities upon the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace, until the decision of the President is had thereon, or until the owner gives such bond and security as is required of the owners of armed vessels by the preceding section.

Construction of this Title.
Secs. 2, 13, *ibid.*, v. 3, pp. 448, 450.
Sec. 5291, R.S.

2089. The provisions of this Title shall not be construed to extend to any subject or citizen of any foreign prince, state, colony, district, or people who is transiently within the United States, and enlists or enters himself on board of any vessel of war, letter of marque, or privateer, which at the time of its arrival within the United States was fitted and equipped as such, or hires or retains another subject or citizen of the same foreign prince, state, colony, district, or people, who is transiently within the United States, to enlist or enter himself to serve such foreign prince, state, colony, district, or people, on board such vessel of war, letter of marque, or privateer, if the United States shall then be at peace with such foreign prince, state, colony, district, or people. Nor shall they be construed to prevent the prosecution or punishment of treason, or of any piracy defined by the laws of the United States.

EXTRADITION.

Par.
2090. Protection of accused.
2091. Powers of receiving agent.
Par.
2092. Penalty for opposing agent.
2093. Extradition to occupied territory.

Protection of the accused.
Mar. 3, 1869, c. 141, s. 1, v. 15, p. 337.
Sec. 5275, R.S.

2090. Whenever any person is delivered by any foreign government to an agent of the United States, for the purpose of being brought within the United States and tried for any crime of which he is duly accused, the President shall have power to take all necessary measures for the transportation and safe-keeping of such accused person, and for his security against lawless violence, until the final conclusion of his trial for the crimes or offenses specified in the warrant of extradition, and until his final discharge from custody or imprisonment for or on account of such crimes or offenses, and for a reasonable time thereafter, and may employ such portion of the land or naval forces of the United States, or of the militia thereof, as may be necessary for the safe-keeping and protection of the accused.

---

[1] The law does not prohibit armed vessels belonging to citizens of the United States from sailing out of our ports; it only requires the owners to give security that such vessels shall not be employed by them to commit hostilities against foreign powers at peace with the United States. U. S. *v.* Quincy, 5 Pet., 445.

Powers of agent receiving offenders delivered by a foreign government.
Sec. 2, *ibid.*, p. 338.
Sec. 5276, R. S.

2091. Any person duly appointed as agent to receive, in behalf of the United States, the delivery, by a foreign government, of any person accused of crime committed within the jurisdiction of the United States, and to convey him to the place of his trial, shall have all the powers of a marshal of the United States, in the several districts through which it may be necessary for him to pass with such prisoner, so far as such power is requisite for the prisoner's safe-keeping.

Penalty for opposing agent, etc.
Sec. 3, *ibid.*
Sec. 5277, R. S.

2092. Every person who knowingly and willfully obstructs, resists, or opposes such agent in the execution of his duties, or who rescues or attempts to rescue such prisoner, whether in the custody of the agent or of any officer or person to whom his custody has lawfully been committed, shall be punishable by a fine of not more than one thousand dollars, and by imprisonment for not more than one year.

Extradition to occupied territory.
June 6, 1900, v. 31, p. 656.

2093. Whenever any foreign country or territory, or any part thereof, is occupied by or under the control of the United States, any person who shall violate, or who has violated, the criminal laws in force therein, by the commission of any of the following offenses, namely: Murder and assault with intent to commit murder; counterfeiting or altering money, or uttering or bringing into circulation counterfeit or altered money; counterfeiting certificates or coupons of public indebtedness, bank notes, or other instruments of public credit, and the utterance or circulation of the same; forgery or altering, and uttering what is forged or altered; embezzlement or criminal malversation of the public funds, committed by public officers, employees, or depositaries; larceny or embezzlement of an amount not less than one hundred dollars in value; robbery; burglary, defined to be the breaking and entering by nighttime into the house of another person with intent to commit a felony therein; and the act of breaking and entering the house or building of another, whether in the day or nighttime, with the intent to commit a felony therein; the act of entering, or of breaking and entering the offices of the Government and public authorities, or the offices of banks, banking houses, savings banks, trust companies, insurance or other companies, with the intent to commit a felony therein; perjury or the subornation of perjury; rape; arson; piracy by the law of nations; murder, assault with intent to kill, and manslaughter, committed on the high seas, on board a ship owned by or in control of citizens or residents of such foreign country or territory and not under the flag of the United States, or of some other government; malicious destruction of or attempt to destroy railways, trams, vessels, bridges, dwellings, public edifices or other buildings, when the act endangers human life, and who shall depart or flee, or who has departed or fled, from justice therein to the United States, any Territory thereof, or to the District of Columbia, shall, when found therein, be liable to arrest and detention by the authorities of the United States, and on the written request or requisition of the military governor or other chief executive officer in control of such foreign country or territory shall be returned and surrendered as hereinafter provided to such authorities for trial under the laws in force in the place where such offense was committed. All the provisions of sections fifty-two hundred and seventy to fifty-two hundred and seventy-seven of this Title, so far as applicable, shall govern proceedings authorized by this proviso: *Provided further*, That such proceedings shall be had before a judge of the courts of the United States only, who shall hold such person on evidence establishing probable cause that he is guilty of the offense charged: *And provided further*, That no return or surrender shall be made of any person charged with the commission of any offense of a political nature. If so held such person shall be returned and surrendered to the authorities in control of such foreign country or territory on the order of the Secretary of State of the United States, and such authorities shall secure to such a person a fair and impartial trial.[1]—*Act of June 6, 1900* (*31 Stat. L., 656.*)

---

[1] The foregoing enactment constitutes a proviso to section 5270, Revised Statutes.

GUANO ISLANDS.

Par.
2094. Claim of United States to islands.
2095. Notice of discovery and proofs to be furnished.
2096. Completion of proof in case of death of discoverer.
2097. Exclusive privileges of discoverer.
Par.
2098. Restrictions upon exportation.
2099. Regulation of guano trade.
2100. Criminal jurisdiction.
2101. Employment of land and naval forces.
2102. Right to abandon island.

Claim of United States to islands.
Aug. 18, 1856, c. 164, s. 1, v. 11, p. 119.
Sec. 5570, R.S.

2094. Whenever any citizen of the United States discovers a deposit of guano on any island, rock, or key, not within the lawful jurisdiction of any other government, and not occupied by the citizens of any other government, and takes peaceable possession thereof, and occupies the same, such island, rock, or key may, at the discretion of the President, be considered as appertaining to the United States.

Notice of discovery and proofs to be furnished.
Ibid.
Sec. 5571, R.S.

2095. The discoverer shall, as soon as practicable, give notice, verified by affidavit, to the Department of State, of such discovery, occupation, and possession, describing the island, rock, or key, and the latitude and longitude thereof, as near as may be, and showing that such possession was taken in the name of the United States; and shall furnish satisfactory evidence to the State Department that such island, rock, or key was not, at the time of the discovery thereof, or of the taking possession and occupation thereof by the claimants, in the possession or occupation of any other government or of the citizens of any other government, before the same shall be considered as appertaining to the United States.

Completion of proof in case of death of discoverer.
Apr. 2, 1872, c. 81, s. 1, v. 17, p. 48.
Sec. 5572, R.S.

2096. If the discoverer dies before perfecting proof of discovery or fully complying with the provisions of the preceding section, his widow, heir, executor, or administrator shall be entitled to the benefits of such discovery, upon complying with the provisions of this Title; but nothing herein contained shall be held to impair any rights of discovery or any assignment by a discoverer heretofore recognized by the United States.

Exclusive privileges of discoverer.
Aug. 18, 1856, c. 164, s. 2, v. 11, p. 119.
Sec. 5573, R.S.

2097. The discoverer, or his assigns, being citizens of the United States, may be allowed, at the pleasure of Congress, the exclusive right of occupying such island, rocks, or keys for the purpose of obtaining guano, * * * and may be allowed to charge and receive for every ton thereof delivered alongside a vessel, in proper tubs, within reach of ship's tackle, a sum not exceeding eight dollars per ton for the best quality, or four dollars for every ton taken while in its native place of deposit.

2098. No guano shall be taken from any such island, rock, or key, except for the use of the citizens of the United States or of persons resident therein. The discoverer, or his widow, heir, executor, administrator, or assigns, shall enter into bond, in such penalty and with such sureties as may be required by the President, to deliver the guano to citizens of the United States, for the purpose of being used therein, and to none others, and at the price prescribed, and to provide all necessary facilities for that purpose within a time to be fixed in the bond; * * * This section shall, however, be suspended in relation to all persons who have complied with the provisions of this Title, for five years from and after the fourteenth day of July, eighteen hundred and seventy-two.[1]

Restrictions upon exportation.
Ibid.
July 28, 1866, c. 298, s. 3, v. 14, p. 328; Apr. 2, 1872, c. 81, s. 1, v. 17, p. 48.
Sec. 5574, R.S.

2099. The introduction of guano from such islands, rocks, or keys, shall be regulated as in the coasting trade between different parts of the United States, and the same laws shall govern the vessels concerned therein.

Regulation of guano trade.
Aug. 18, 1856, c. 164, s. 3, v. 11, p. 120.
Sec. 5575, R.S.

2100. All acts done, and offenses or crimes committed, on any such island, rock, or key, by persons who may land thereon, or in the waters adjacent thereto, shall be deemed committed on the high seas, on board a merchant ship or vessel belonging to the United States; and shall be punished according to the laws of the United States relating to such ships or vessels and offenses on the high seas, which laws for the purpose aforesaid are extended over such islands, rocks, and keys.

Criminal jurisdiction.
Sec. 6, *ibid.*
Sec. 5576, R.S.

2101. The President is authorized, at his discretion, to employ the land and naval forces of the United States to protect the rights of the discoverer or his widow, heir, executor, administrator, or assigns.

Employment of land and naval forces.
Sec. 5, *ibid.*
Sec. 5577, R.S.

2102. Nothing in this Title contained shall be construed as obliging the United States to retain possession of the islands, rocks, or keys, after the guano shall have been removed from the same.

Right to abandon islands.
Sec. 4, *ibid.*
Sec. 5578, R.S.

RESTRICTION UPON THE USE OF MILITARY FORCE.

2103. From and after the passage of this act it shall not be lawful to employ any part of the Army of the United States, as a posse comitatus, or otherwise, for the purpose of executing the laws, except in such cases and under such circumstances as such employment of said force may be expressly authorized by the Constitution or by act of Con-

Army not to be used as a posse comitatus.
Sec. 15, June 18, 1878. v. 20, p. 152.

---

[1] This section was suspended for five years by the act of March 15, 1878 (20 Stat. L., 30), and for a further period of five years by the act of April 14, 1884 (23 Stat. L., 11).

gress; and no money appropriated by this act shall be used to pay any of the expenses incurred in the employment of any troops in violation of this section.[1] *Sec. 15, act of June 18, 1878 (20 Stat. L., 152).*

---

[1] It is provided in section 15 of the act of June 18, 1878, chapter 263, that "From and after the passage of this act it shall not be lawful to employ any part of the Army of the United States, as a posse comitatus, or otherwise, for the purpose of executing the laws, except in such cases and under such circumstances as such employment of said force may be expressly authorized by the Constitution or by act of Congress. In view of this legislation, *held* as follows:

That inasmuch as it was not expressly authorized by any act of Congress that United States marshals should be empowered to summon the military to serve on a posse comitatus (but this was authorized only indirectly and impliedly by the provision of the act of September 24, 1789, incorporated in section 787 of the Revised Statutes), (*a*) the Army could not, under the existing law, legally act on the posse comitatus of a marshal or deputy marshal of the United States. (*b*) Dig. Opin. J. A. G., 162, par. 6. See also Ibid., ed. 1901, par. 487.

That in the absence of such an "unlawful combination" as is contemplated by section 5298, Revised Statutes, the President would not be authorized to employ a military force to assist inspectors of customs in seizing smuggled property or arresting persons concerned in violations of the revenue laws, such an employment not being expressly authorized by any statute.

That whenever a marshal or deputy marshal was prevented from making due service of judicial process, for the arrest of persons or otherwise, by the forcible resistance or opposition of an unlawful combination or assemblage of persons, the President was expressly authorized by section 5298, Revised Statutes, to employ such part of the Army as he might deem necessary to secure the due service of such process and execute the laws; first, however, in any such case (as in any case arising under sections 5297 and 5299) making proclamation as required by section 5300.

That, notwithstanding the legislation of June 18, 1878, the President was authorized to employ the military to arrest and prevent persons engaging in introducing liquor into the Indian country contrary to law, as also to arrest persons being otherwise in the Indian country in violation of law, (*c*) or to make the arrest therein of Indians charged with the commission of crime, such employment being expressly authorized by sections 2150 and 2152, Revised Statutes.

That the President was authorized by section 2150, Revised Statutes, to remove by military force, after a reasonable notice to quit certain persons commorant upon an Indian reservation contrary to the terms of a treaty between the United States and the tribe occupying the reservation, and who therefore were there "in violation of law" in the sense of that section. (*d*)

That the provision of June 18, 1878, was not to be construed as interfering with the authority and duty of the President to employ a necessary military force for the removal of trespassers from a military reservation, such employment not being, properly speaking, "for the purpose of executing the laws," but a mere protecting, by the executive department, of public property in its military charge. (*e*) Dig. Opin. J. A. G., 162, par. 6.

In the absence of any express provision contained in the acts authorizing the President to make reservations of forest lands (acts of September 25 and October 1, 1890, and March 3, 1891, s. 24) by which he is expressly empowered to use the Army

---

[a] VI Opin. Att. Gen., 471; letter of Attorney-General Evarts to the United States marshal for the northern district of Florida, Attorney-General's Office, August 20, 1868; general instructions to United States marshals from Attorney-General Taft, published in General Orders 96, Headquarters of Army, 1876; also opinion cited in next note.

[b] See, to a similar effect, opinion of the Attorney-General of October 10, 1878 (XVI Opin., 162); also XIX Opin., 293.

[c] But note that, in view of the provisions of section 2151, Revised Statutes, an officer of the Army who detains a person arrested under section 2150 longer than five days before "conveying him to the civil authority," or subjects him when in arrest to unreasonably harsh treatment, renders himself liable to an action in damages for false imprisonment. *In re* Carr, 3 Sawyer, 316; Waters *v.* Campbell, 5 ibid., 17.

[d] See XIV Opin. Att. Gen., 451; 20 ibid., 245; and note the proclamation of the President published in General Orders 16, Headquarters of Army, 1880, relating to the intrusion of unauthorized persons upon the "Indian territory" and declaring that the Army would be employed to effectuate their removal if necessary,

[e] "Due caution should be observed, however, that in executing this duty there be no unnecessary or wanton harm done to persons or property." IX Opin. Att. Gen., 476.

TREASON.

2104. Every person owing allegiance to the United States who levies war against them, or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason.[1]

Treason.
Apr. 30, 1790, c. 9, s. 1, v. 1, p. 112; Mar. 3, 1875, c. 145, v. 18, pp. 479, 480.
Sec. 5331, R.S.

2105. Every person guilty of treason shall suffer death; or, at the discretion of the court, shall be imprisoned at hard labor not less than five years, and fined not less than ten thousand dollars, to be levied on and collected out of any or all of his property, real and personal, of which he was the owner at the time of committing such treason, any sale or conveyance to the contrary notwithstanding; and every person so convicted of treason shall, moreover, be incapable of holding any office under the United States.[2]

Punishment of treason.
July 17, 1862, c. 195, ss. 1, 3, v. 12, p. 589.
Sec. 5332, R.S.

2106. Every person owing allegiance to the United States and having knowledge of the commission of any treason against them, who conceals, and does not, as soon as may be, disclose and make known the same to the President or to some judge of the United States, or to the governor, or to some judge or justice of a particular State, is guilty of misprision of treason, and shall be imprisoned not more than seven years, and fined not more than one thousand dollars.

Misprision of treason.
Apr. 30, 1790, c. 9, s. 2, v. 1, p. 112.
U. S. *v.* Wiltberger, 5 Wh., 97; Confiscation Cases, 1 Woods, 221; U. S. *v.* Tract of Land, 1 Woods, 475.
Sec. 5333, R.S.

2107. Every person who incites, sets on foot, assists, or engages in any rebellion or insurrection against the authority of the United States, or the laws thereof, or gives aid or comfort thereto, shall be punished by imprisonment not more than ten years, or by a fine of not more than ten thousand dollars, or by both of such punishments; and shall, moreover, be incapable of holding any office under the United States.

Inciting or engaging in rebellion or insurrection.
July 17, 1862, c. 195, s. 2, v. 12, p. 590.
Sec. 5334, R.S.

2108. Every citizen of the United States, whether actually resident or abiding within the same, or in any foreign country, who, without the permission or authority of the Government, directly or indirectly, commences or carries on

Criminal correspondence with foreign Governments.
Jan. 30, 1799, c. 1, v. 1, p. 613.
Sec. 5335, R.S.

---

in execution of such statutes, *held* that the President would not be authorized to employ, as a *posse comitatus* or otherwise, the military forces to aid in enforcing the regulations established by the Secretary of the Interior for the care and management of such lands. Such employment, if permitted, would render the troops trespassers and liable to civil suits and prosecutions. Ibid., 165, par. 9.

[1] Gearing *v.* U. S., 3 N. & H., 165.

[2] U. S. *v.* The Insurgents, 2 Dall., 385; U. S. *v.* Mitchell, 2 Dall., 348; U. S. *v.* Villato, 2 Dall., 370; Ex parte Bolman and Swartwout, 4 Cr., 75; U. S. *v.* Pryor, 3 Wash., 234; U. S *v.* Hanway, 2 Wall. Jr. C. C., 139; 1 Burr's Trial, 14–16; 2 Burr's Trial, 402, 405, 417; U. S. *v.* Hoxie, 1 Paine, 265; U. S. *v.* Greathouse, 2 Abb. C. C., 364; Confiscation Cases, 20 Wall., 92; Wallack et al. *v.* Van Riswick, 92 U. S., 202; Windsor *v.* McVeigh, 93 U. S., 274.

any verbal or written correspondence or intercourse with any foreign government, or any officer or agent thereof, with an intent to influence the measures or conduct of any foreign government or of any officer or agent thereof, in relation to any disputes or controversies with the United States, or to defeat the measures of the Government of the United States; and every person, being a citizen of, or resident within, the United States, and not duly authorized, who counsels, advises, or assists in any such correspondence, with such intent, shall be punished by a fine of not more than five thousand dollars, and by imprisonment during a term not less than six months, nor more than three years; but nothing in this section shall be construed to abridge the right of a citizen to apply, himself or his agent, to any foreign government, or the agents thereof, for redress of any injury which he may have sustained from such government, or any of its agents or subjects.

Seditious conspiracy.
July 31, 1861, c. 33, v. 12, p. 284; Apr. 20, 1871, c. 22, s. 2, v. 17, p. 13.
Ex parte Lange, 18 Wall, 163.
Sec. 5336, R.S.

2109. If two or more persons in any State or Territory conspire to overthrow, put down, or destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof; or by force to prevent, hinder, or delay the execution of any law of the United States; or by force to seize, take, or possess any property of the United States contrary to the authority thereof; each of them shall be punished by a fine of not less than five hundred dollars and not more than five thousand dollars, or by imprisonment, with or without hard labor, for a period not less than six months, nor more than six years, or by both such fine and imprisonment.

Recruiting soldiers or sailors to serve against the United States.
Aug. 6, 1861, c. 56, s. 1, v. 12, p. 317.
Sec. 5337, R.S.

2110. Every person who recruits soldiers or sailors within the United States to engage in armed hostility against the same, or who opens within the United States a recruiting station for the enlistment of such soldiers or sailors, to serve in any manner in armed hostility against the United States, shall be fined not less than two hundred dollars, nor more than one thousand dollars, and imprisoned not less than one year, nor more than five years.

Enlistment to serve against the United States.
Sec. 2, *ibid.*
Sec. 5338, R.S.

2111. Every soldier or sailor enlisted or engaged within the United States, with intent to serve in armed hostility against the same, shall be punished by a fine of one hundred dollars, and by imprisonment not less than one year nor more than three years.

THE LAW OF WAR[1]—MILITARY OCCUPATION.

2112. Spain relinquishes all claim of sovereignty over the island of Cuba, and as the island is, upon its evacuation by Spain, to be occupied by the United States, the

Relinquishment of sovereignty over Cuba by Spain. Military occupation.

---

[1] *The law of war.*—The law of war is, in brief, the law of military government and authority as exercised in time of war, foreign or civil. Its usual field is the territory of a conquered country in the occupation of a hostile army; it is sometimes extended, however, though generally in a milder form, to localities under "martial law." It is properly a part of the law of nations, though its application may be materially varied by the circumstances of the country or the people brought under its sway. Dig. Opin. J. A. G., par. 1567.

Rule of nonintercourse.—It is a fundamental principle of the law of war that during a state of war all commercial intercourse between the belligerents is interdicted and made illegal except when and where it may be expressly authorized by the Government. During the late civil war, which, as respects the application in general of the laws and usages of war, was assimilated to a foreign war, (*a*) all trade and intercourse with the enemy, except so far as permitted by the President under authority from Congress (or in rare cases by a commanding general in the field representing the President), was necessarily suspended. (*b*)

As to the principal forms of violation of the law of nonintercourse and other violations of the laws of war, made the subject of trial by military commission during the late war, see the title "Military Commissions" in the chapter entitled MILITARY TRIBUNALS.

Held (January, 1865) that a system of correspondence which had been concerted and maintained between Northern and Southern newspapers by means of an interchange of published communications entitled "Personals," was an evasion of the rule interdicting intercourse with the enemy in time of war, and, not being within the regulations established for correspondence by letter between the lines by flag of truce, should not, however innocent might be many or most of the communications, be sanctioned by the Government, but that the proprietors of the Northern newspapers concerned should be notified that unless ths practice was discontinued they would be liable to be proceeded against for promoting correspondence with the enemy in violation of the laws of war or of the special act of February 25, 1863. (*c*)—(12 Stat. L., 696.) Dig. Opin. J. A. G., par. 1574.

Offenses against the law of nonintercourse between the belligerents in time of war are no less such when committed by foreigners than when committed by citizens. Thus where certain persons made their way early in the late war from Scotland to South Carolina, engaged for a considerable period in the manufacture of treasury notes for the Confederate authorities, and at the end of their employment came secretly and without authority into our lines with the design of returning to their homes, *held* that, though British subjects, they had identified themselves with the cause of the enemy, and were properly amenable to trial for the offense of penetrating our military lines in violation of the laws of war. (*d*) Ibid., par. 1570.

Newspapers.—There can be no doubt as to the authority of the commander of an

[a] See Prize Cases, 2 Black, 666–669; Dow *v.* Johnson, 10 Otto, 164; Brown *v.* Hiatt, 1 Dillon, 372; Phillips *v.* Hatch, ibid., 571; Sanderson *v.* Morgan, 39 N. Y., 231; Perkins *v.* Rogers, 35 Ind., 124; Leathers *v.* Com. Ins. Co., 2 Bush, 639; Hedges *v.* Price, 2 W. Va., 192.

[b] The Ouachita Cotton, 6 Wallace, 521; Cappell *v.* Hill, 7 ibid., 542, 554; McKee *v.* United States, 8 ibid., 163; United States *v.* Grossmayer, 9 ibid., 72; Montgomery *v.* United States, 15 ibid., 395; Hamilton *v.* Dillin, 21 ibid,, 73; Mitchell *v.* United States, ibid., 359; Matthews *v.* McStea, 1 Otto, 7; Dow *v.* Johnson, 10 ibid., 164; Kershaw *v.* Kelsey, 100 Mass., 561; Lieber's Instructions, G. O., 100, War Dept., 1863, par. 86. Besides the suspension incident to the state of war, a suspension of commercial intercourse with the enemy was specially directed by act of Congress of July 13, 1861, and proclaimed by the President on August 16, 1861. By authority conferred by the same statute general regulations, concerning commercial intercourse with and in the States declared in insurrection, were approved by the President, January 26, 1864, and published in G. O., 53, Department of the Gulf, of April 29, 1864.

[c] See General Orders, No. 10, Department of the East, 1865.

[d] Where a party arrested in attempting without authority to cross the Potomac for the purpose of holding communication with persons in the enemy's country was ordered by the department commander—his offense having been committed in a district in military occupation—to be placed under military surveillance and to furnish a bond with sufficient sureties, obliging him not to attempt again during the war to join or hold intercourse with the enemy, *held* that such proceeding was warranted by the laws and customs of war. Dig. Opin. J. A. G., par. 1571.

Two soldiers of the United States Army having been seized and delivered across the lines to the enemy, by a party of *civilians*, in a portion of one of the insurrectionary States in the occupation of the Federal forces, an equal number of the citizens of the district were ordered by the commanding general to be arrested and held till the offenders, who meanwhile had taken refuge with the enemy, should be surrendered for trial. *Held* that such an act of retaliation was warranted by the laws and usages of war. Ibid., par. 1572.

Treaty with Spain Dec. 10, 1898, v. 30. 1754. United States will, so long as such occupation shall last, assume and discharge the obligations that may, under international law, result from the fact of its occupation for the

---

army, in occupation and government of the enemy's country, to suppress a newspaper or other publication deemed by him to be injurious to the public interests in exciting opposition to the dominant authority or encouraging the support of the enemy's cause on the part of the inhabitants. A newspaper may be a powerful agent for such a purpose, and when it is so it may, under the laws of war, as legally be silenced as may a fort or battery of the enemy in the field. Ibid., par. 1573.

Contributions.—Contributions of money exacted from the enemy by competent military authority, being justified by the law of war and conquest, (*a*) *held* that a tax of five dollars per bale, levied (in 1864) by the military commander at New Orleans, General Canby, upon cotton brought into that city and applied to hospital, sanitary, and charitable purposes, was authorized under the discretionary power with which such a commander was properly invested in time of war. (*b*) Ibid., par. 1575.

Military occupation.—It is a principle of the law of war that the municipal laws of a conquered country continue in force during the military occupation by the conqueror, except in so far as the same may necessarily be suspended or their operation be affected by his acts. (*c*) So where a testator had executed in Vicksburg, Miss., after its capture and during its occupation by our forces, a will devising real estate, but such will, in not being attested by the required number of witnesses, was invalid under the State law *held*, that, as this law was in no respect modified upon the capture, the devisee under the will, however loyal, could not properly be invested by military authority with the legal title to such estate against the heirs at law. Dig. Opin. J. A. G., par. 1576.

Courts in occupied territory.—It is authorized by the laws of war for a military officer commanding in time of war in a region in military occupation, and where the ordinary courts are closed by the exigencies of the war, to appoint a special court or judge for the determination of cases not properly cognizable by the ordinary military tribunals. In the civil war such courts were not unfrequently constituted and were commonly designated *provost courts.* Such courts had no jurisdiction of purely military offenses (i. e., offenses which the Articles of War make cognizable by court-martial), and were therefore not properly authorized to impose forfeitures of pay or other strictly military punishments upon officers or soldiers of the Army. These courts were in general resorted to as substitutes for the ordinary police courts of cities, and their jurisdiction was in general confined to cases of breaches of the peace and of violation of such civil ordinances or military regulations as might be in force for the government of the locality. Some of these courts, however, took cognizance, in the course of their existence, of cases of very considerable importance, civil as well as criminal. (*d*) Ibid., par. 1577.

---

[a] Lewis *v.* McGuire, 3 Bush, 202; Clark *v.* Dick, 1 Dillon, 8. And see Major-General Scott's order (G. O., 395, Hdqrs. of Army, 1847) levying assessments upon Mexican communities for the support of the military government and occupation.

[b] See Hamilton *v.* Dillin, 21 Wallace, 73. The taking possession, by the order of the commander of the military department at New Orleans, for the use of the military service in the prosecution of the war, of moneys belonging to the enemies on deposit in the banks of that city, while occupied (in 1863) by our Army, *held* an act justified by the strict law of war. Dig. Opin. J. A. G., par. 1575. See New Orleans *v.* Steamboat Co., 20 Wallace, 394; Witherspoon *v.* Farmers' Bk., 2 Duvall, 497. But in Planters' Bk. *v.* Union Bk., 16 Wallace, 483, this particular order was held to have been an exceeding of authority, not because unauthorized by the law of war, but for the reason that a previous commander—General Butler—by his proclamation on first occupying the city, of May 1, 1862, had pledged the Government to the holding inviolate of all rights of property. And see The Venice, 2 Wallace, 258.

[c] "By the well-recognized principles of international law the mere military occupation of a country by a belligerent power or a conqueror does not *ipso facto* displace the municipal laws. Such conqueror or belligerent occupier may suspend or supersede them for the time being, but in the absence of orders to that effect they remain in force." Wingfield *v.* Crosby, 5 Cold., 246. "Supreme military authority in a city is not incompatible with the existence and authority of courts of civil jurisdiction and procedure." Pepin *v.* Lachenmeyer, 45 N. Y., 27. And see Kimball *v.* Taylor, 2 Woods, 37; Rutledge *v.* Fogg, 3 Cold., 554; Hefferman *v.* Porter, 6 ibid., 391; Murrell *v.* Jones, 40 Miss., 566; Dow *v.* Johnson, *post.* But where the courts of a hostile country are left open by the conqueror it is only the citizens of such country that are subject to their jurisdiction; the officers and soldiers of the occupying army are in no manner amenable to the same. This principle has recently been illustrated by the Supreme Court in the cases of Coleman *v.* Tennessee, 7 Otto, 509; Dow *v.* Johnson, 10 Otto, 158, 166.

[d] While the majority of these special tribunals were confined to the exercise of such functions as are commonly devolved upon police or justices' courts, their authority, when empowered for the purpose by a competent military commander, to take cognizance of important civil actions has been affirmed by the Supreme Court of the United States in the case of Mechs. and Traders' Bk. *v.* Union Bk., 22 Wallace, 276, in which a "provost court," established at New Orleans by an order of the department commander, of May 1, 1862, was held to be a lawful tribunal, and a judgment rendered by it in action for the recovery of $130,000, money borrowed by one bank from another, was recognized

protection of life and property. *Article I, Treaty with Spain of December 10, 1898 (30 Stat. L. 1754).*

---

as legal. [See this case also in 25 La. An., 387.] [For orders establishing such tribunals, see Dig. Opin. J. A. G., par. 1577, note 1.]

So, the authority of the "provisional court of Louisiana" (which succeeded the "provost court" last indicated and was established by the *President* in an Executive order of Oct. 20, 1862) to determine a cause in admiralty was affirmed by the United States Supreme Court in The Grapeshot, 9 Wallace, 129, and later its jurisdiction in a civil action on a mortgage debt was recognized by that tribunal in Burke *v.* Miltenberger, 19 Wallace, 519. [And see the same case, as Burke *v.* Tregree, in 22 La. An., 629.] The authority of the same court to take cognizance of a case of murder and one of arson (as also of civil controversies) was maintained in an elaborate opinion of its judge, Hon. C. A. Peabody (in 1865), in the cases of the United States *v.* Reiter & Louis, reported in 13 Am. Law Reg., 534.

The civil jurisdiction of a similar *war* court—the "commission" established by the department commander in Memphis, in 1863—was similarly recognized in Hefferman *v.* Porter, 6 Cold., 391. And as to the full authority of this tribunal as a substitute for the ordinary civil courts of the locality, see also State *v.* Stillman, 7 Cold., 341. [But see, *contra*, Walsh *v.* Porter, 12 Heisk., 401.]

In the cases thus sustaining the action of special tribunals during the late war the courts in general refer to the earlier and leading case of Leitensdorfer *v.* Webb, 20 Howard, 176, in which was affirmed the authority of the courts established in 1846 in New Mexico as a part of the system of civil government instituted by General Kearney, the military commandant. [With this case consult also United States *v.* Rice, 4 Wheaton, 254; Cross *v.* Harrison, 16 Howard, 164.]

The reasoning upon which the above-cited later rulings is based is: That the authority to create courts with a civil as well as a criminal jurisdiction in a conquered country in military occupation attaches to the dominant power by the law of war and of nations as an incident to the power to establish a military government; that it is not only the right, but the duty, of the conqueror to institute such courts "for the security of persons and property and for the administration of justice;" and that, when during the late war such courts were created by commanding generals—such as the commanders of separate departments or armies—the order of the commander was to be presumed to be the order and act of the President.

CHAPTER XL.

PENSIONS.

Par.
2113–2115. The Commissioner of Pensions; duties.
2116–2136. The general pension law.
2137–2147. Widows and children.
2148–2150. Dependent relatives.
2151–2154. Dependent pension law.
2155–2156. Pensions to army nurses.
2157–2166. Mexican war pensions.
2167–2174. Pensions for Indian wars, 1832–1842.
2175–2177. Pensions under special acts.
2178–2185. Commencement of pensions; arrears of pension.
2186–2188. Increase of pensions.
2189–2201. Declaration and evidence in pension cases.
Par.
2202. Removal of limitation.
2203–2211. Attorneys' fees.
2212–2231. Payment of pensions.
2232–2234. Accrued and unclaimed pensions.
2235–2236. Assignments.
2237–2246. Examining boards.
2247. Inspection of agencies.
2248. Suspension of pensions; restriction on; pensions a vested right.
2249–2252. Investigations.
2253–2256. Criminal offenses.
2257–2262. Miscellaneous provisions.

THE COMMISSIONER OF PENSIONS.

Par.
2113. The Commissioner of Pensions.
2114. Duties of the Commissioner.
Par.
2115. The Deputy Commissioner of Pensions.

Commissioner of Pensions. Sec. 470, R. S. **2113.** There shall be in the Department of the Interior a Commissioner of Pensions, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be entitled to receive a salary of four thousand dollars a year.

Duties of the Commissioner. Sec. 471, R. S. **2114.** The Commissioner of Pensions shall perform, under the direction of the Secretary of the Interior, such duties in the execution of the various pension and bounty-land laws as may be prescribed by the President.

Deputy Commissioner. 3 Mar., 1873, c. 234, s. 29, v. 17, p. 575. Sec. 472, R. S. **2115.** There shall be in the Department of the Interior a Deputy Commissioner of Pensions, who shall be appointed by the President, by and with the advice and consent of the Senate, who shall be charged with such duties in the Pension Bureau as may be prescribed by the Secretary of the Interior, or may be required by law, and in case of death, resignation, absence, or sickness of the Commissioner, his duties shall devolve upon the Deputy Commissioner, until a successor is appointed or such absence or sickness ceases. The Deputy Commissioner shall be entitled to receive an annual salary of twenty-five hundred dollars.

THE GENERAL PENSION LAW.

Par.
2116. Who entitled.
2117. Classes enumerated.
2118. Pensions to be for wounds, injuries, etc., received in line of duty.
2119. Rates of pension.
2120. Pensions according to rank.
2121. Pensions for permanent specific disabilities prior to June 4, 1872.
2122. The same, subsequent to June 4, 1872.
2123. Loss of both hands, feet, or eyes.
2124. Loss of one hand and one foot.
2125. Loss of both hands, feet, or eyes.

Par.
2126. Total blindness.
2127. Increase of pension.
2128. Loss of leg at hip joint.
2129. Loss of arm at shoulder joint.
2130. Loss of arm or leg; increase.
2131. Loss of hand or foot.
2132. Total or partial deafness.
2133. Loss of both hands; increase.
2134. Rate for incapacity requiring constant attendance.
2135. Rate for incapacity requiring frequent attendance.
2136. Division of eighteen-dollar rate.

2116. Every person specified in the several classes enumerated in the following section, who has been, since the fourth day of March, eighteen hundred and sixty-one, or who is hereafter disabled under the conditions therein stated, shall, upon making due proof of the fact, according to such forms and regulations as are or may be provided in pursuance of law, be placed on the list of invalid pensioners of the United States, and be entitled to receive, for a total disability, or a permanent specific disability, such pension as is hereinafter provided in such cases; and for an inferior disability, except in cases of permanent specific disability, for which the rate of pension is expressly provided, an amount proportionate to that provided for total disability; and such pension shall commence as hereinafter provided, and continue during the existence of the disability.[1]

Who may have pensions.
Mar. 3, 1873, c. 234, s. 1, v. 17, pp. 566, 567.
Sec. 4692, R.S.

2117. The persons entitled as beneficiaries under the preceding section are as follows:

Classes enumerated.

First. Any officer of the Army, including regulars, volunteers, and militia, or any officer in the Navy or Marine Corps, or any enlisted man, however employed, in the military or naval service of the United States, or in its Marine

Officers of Army and Navy, and enlisted men, etc.
Ibid.
Sec. 4693, R.S.

---

[1] The act of March 3, 1883, 23 Stat. L., 362, contains the requirements that "all applicants for pension shall be presumed to have had no disability at the time of enlistment, but such presumption may be rebutted."

Corps, whether regularly mustered or not, disabled by reason of any wound or injury received, or disease contracted, while in the service of the United States and in the line of duty.

Master, etc., serving on gunboat, etc.

Second. Any master serving on a gunboat, or any pilot, engineer, sailor, or other person not regularly mustered, serving upon any gunboat or war vessel of the United States, disabled by any wound or injury received, or otherwise incapacitated while in the line of duty, for procuring his subsistence by manual labor.

Volunteers, not enlisted, etc.

Third. Any person not an enlisted soldier in the Army, serving for the time being as a member of the militia of any State, under orders of an officer of the United States, or who volunteered for the time being to serve with any regularly organized military or naval force of the United States, or who otherwise volunteered and rendered service in any engagement with rebels or Indians, disabled in consequence of wounds or injury received in the line of duty in such temporary service. But no claim of a State militiaman, or nonenlisted person, on account of disability from wounds, or injury received in battle with rebels or Indians, while temporarily rendering service, shall be valid unless prosecuted to a successful issue prior to the fourth day of July, eighteen hundred and seventy-four.

Acting assistant surgeon, etc.

Fourth. Any acting assistant or contract surgeon disabled by any wound or injury received or disease contracted in the line of duty while actually performing the duties of assistant surgeon or acting assistant surgeon with any military force in the field, or in transitu, or in hospital.

Provost-marshal, etc.

Fifth. Any provost-marshal, deputy provost-marshal, or enrolling officer disabled, by reason of any wound or injury received in the discharge of his duty, to procure a subsistence by manual labor.

Pension for wounds received or diseases contracted only in line of duty, etc.
Ibid., p. 567.
Sec. 4694, R.S.

2118. No person shall be entitled to a pension by reason of wounds or injury received or disease contracted in the service of the United States subsequent to the twenty-seventh day of July, eighteen hundred and sixty-eight, unless the person who was wounded, or injured, or contracted the disease was in the line of duty, and, if in the military service, was at the time actually in the field, or on the march, or at some post, fort, or garrison, or en route, by direction of competent authority, to some post, fort, or garrison; or, if in the naval service, was at the time borne on the books of some ship or other vessel of the United States, at sea or in harbor, actually in commission, or was at some naval station, or on his way, by direction of competent authority, to the United States or to some other vessel or naval station or hospital.

Rates of pension for total disability.
Sec. 2, *ibid.*, p. 567.
Sec. 4695, R.S.

2119. The pension for total disability shall be as follows, namely: For lieutenant-colonel and all officers of higher rank in the military service and in the Marine Corps, and for captain, and all officers of higher rank, commander, sugeon, paymaster, and chief engineer, respectively ranking with commander by law, lieutenant commanding and master commanding, in the naval service, thirty dollars per month; for major in the military service and in the Marine Corps, and lieutenant, surgeon, paymaster, and chief engineer, respectively ranking with lieutenant by law, and passed assistant surgeon in the naval service, twenty-five dollars per month; for captain in the military service and in the Marine Corps, chaplain in the Army, and provost-marshal, professor of mathematics, master, assistant surgeon, assistant paymaster, and chaplain in the naval service, twenty dollars per month; for first lieutenant in the military service and in the Marine Corps, acting assistant or contract surgeon, and deputy provost-marshal, seventeen dollars per month; for second lieutenant in the military service and in the Marine Corps, first assistant engineer, ensign, and pilot in the naval service, and enrolling officer, fifteen dollars per month; for cadet midshipman, passed midshipman, midshipmen, clerks of admirals and paymasters and of other officer commanding vessels, second and third assistant engineer, master's mate, and all warrant officers in the naval service, ten dollars per month; and for all other persons whose rank or office is not mentioned in this section, eight dollars per month; and the masters, pilots, engineers, sailors, and crews upon the gunboats and war vessels shall be entitled to receive the pension allowed herein to those of like rank in the naval service.[1]

Pension according to rank.
Ibid.
Sec. 4696, R.S.

2120. Every commissioned officer of the Army, Navy, or Marine Corps shall receive such and only such pension as is provided in the preceding section for the rank he held at the time he received the injury or contracted the disease which resulted in the disability, on account of which he may be entitled to a pension; and any commission or Presidential appointment, regularly issued to such person, shall be taken to determine his rank from and after the date, as given in the body of the commission or appointment conferring said rank: *Provided*, That a vacancy existed in the rank thereby conferred; that the person commissioned was not disabled for military duty, and that he did not willfully neglect or refuse to be mustered.

---

[1] By section 4692, Revised Statutes (paragraph 2116, *ante*), an inferior disability shall be rated in proportion to that for total disability.

Pensions for permanent specific disability prior to June 4, 1872.
Sec. 3, *ibid.*, p. 568.
Feb. 28, 1877, c. 73, v. 19, p. 264.
Sec. 4697, R.S.

2121. For the period commencing July fourth eighteen hundred and sixty-four, and ending June third, eighteen hundred and seventy-two, those persons entitled to a less pension than hereinafter mentioned, who shall have lost both feet in the military or naval service and in the line of duty, shall be entitled to a pension of twenty dollars per month; for the same period those persons who, under like circumstances, shall have lost both hands[1] or the sight of both eyes, shall be entitled to a pension of twenty-five dollars per month; and for the period commencing March third, eighteen hundred and sixty-five, and ending June third, eighteen hundred and seventy-two, those persons who under like circumstances shall have lost one hand and one foot, shall be entitled to a pension of twenty dollars per month; and for the period commencing June sixth, eighteen hundred and sixty-six, and ending June third, eighteen hundred and seventy-two, those persons who under like circumstances shall have lost one hand or one foot, shall be entitled to a pension of fifteen dollars per month; and for the period commencing June sixth, eighteen hundred and sixty-six, and ending June third, eighteen hundred and seventy-two, those persons entitled to a less pension than hereinafter mentioned, who by reason of injury received or disease contracted in the military or naval service of the United States and in the line of duty, shall have been permanently and totally disabled in both hands, or who shall have lost the sight of one eye, the other having been previously lost, or who shall have been otherwise so totally and permanently disabled as to render them utterly helpless, or so nearly so as to require regular personal aid and attendance of another person, shall be entitled to a pension of twenty-five dollars per month; and for the same period those who under like circumstances shall have been totally and permanently disabled in both feet, or in one hand and one foot, or otherwise so disabled as to be incapacitated for the performance of any manual labor, but not so much as to require regular personal aid and attention, shall be entitled to a pension of twenty dollars per month; and for the same period all persons who under like circumstances shall have been totally and permanently disabled in one hand, or one foot, or otherwise so disabled as to render their inability to perform manual labor equivalent to the loss of a hand or foot, shall be entitled to a pension of fifteen dollars per month.

Pensions for permanent specific disabilities after June 4, 1872.
Mar. 3, 1873, c. 234, s. 4, v. 17, p. 569; June 18, 1874, c. 298, v. 18, p. 78; June 18, 1874, c. 299, v. 18, p. 78.
Sec. 4698, R.S.

2122. From and after June fourth, eighteen hundred and seventy-two, all persons entitled by law to a less pension than hereinafter specified, who, while in the military or naval service of the United States, and in line of duty, shall have lost the sight of both eyes, or shall have lost the sight of one eye, the sight of the other having been previously lost, or shall have lost both hands, or shall have lost both feet, or been permanently and totally disabled in the same, or otherwise so permanently and totally disabled as to render them utterly helpless, or so nearly so as to require the regular personal aid and attendance of another person, shall be entitled to a pension of thirty-one dollars and twenty-five cents per month;[1] and all persons who, under like circumstances, shall have lost one hand and one foot, or been totally and permanently disabled in the same, or otherwise so disabled as to be incapacitated for performing any manual labor, but not so much as to require regular personal aid and attendance, shall be entitled to a pension of twenty-four dollars per month; and all persons who, under like circumstances, shall have lost one hand, or one foot, or been totally and permanently disabled in the same, or otherwise so disabled as to render their incapacity to perform manual labor equivalent to the loss of a hand or foot, shall be entitled to a pension of eighteen dollars per month:[2] *Provided*, That all persons who, under like circumstances, have lost a leg above the knee, and in consequence thereof are so disabled that they can not use artificial limbs, shall be rated in the second class and receive twenty-four dollars per month from and after June fourth, eighteen hundred and seventy-two; and all persons who, under like circumstances, shall have lost the hearing of both ears, shall be entitled to a pension of thirteen dollars per month from the same date:[3] *Provided*, That the pension for a disability therein mentioned to be proportionately divided for any degree of disability established for which section forty-six hundred and ninety-five makes no provision. *Act of August 4, 1886* (*24 Stat. L., 220*).

---

[1] Increased to fifty dollars by the act of June 18, 1874 (18 Stat. L., 78), and to seventy-two dollars by the act of June 17, 1878 (20 ibid., 144), and June 16, 1880 (21 ibid., 281), and to one hundred dollars in certain cases (loss of both hands) by the act of February 12, 1889 (25 ibid., 659), paragraphs 2123, 2125, and 2127, *post.*

[2] Increased by the act of February 28, 1877 (19 Stat. L., 264), and to twenty-four and thirty dollars per month by the act of March 3, 1883 (22 ibid., 453), and to thirty-six and forty-five dollars per month by the act of August 4, 1886 (24 ibid., 220), paragraphs 2124, 2130, and 2131, *post.*

[3] Increased to thirty dollars by the act of August 27, 1888 (25 Stat. L., 449), paragraph 2132, *post.*

Increase of rate.
June 18, 1874, v. 18, p. 78.

2123. That section 4, of the act approved March 3, 1873, be so amended that all persons who, while in the military service of the United States and in the line of duty, shall have been so permanently and totally disabled as to require the regular personal aid and attendance of another person by the loss of the sight of both eyes, or by the loss of the sight of one eye, the sight of the other having been previously lost, or by the loss of both hands, or by the loss of both feet, or by an injury resulting in total and permanent helplessness, shall be entitled to a pension of $50[1] per month; and this shall be in lieu of a pension of $31.25 per month granted to such person by said section. *Act of June 18, 1874* (*18 Stat. L., 78*).

Restriction.
June 18, 1874, v. 18, p. 78.

The increase of pension shall not be granted by reason of any injuries herein specified unless the same have resulted in permanent helplessness requiring the regular personal aid and attendance of another person. Ibid.

Pensions for loss of one hand and one foot.
Feb. 28, 1877, v. 19, p. 264.

2124. All persons who, while in the military or naval service of the United States, and in the line of duty, shall have lost one hand and one foot, or been totally and permanently disabled in both, shall be entitled to a pension for each of such disabilities, and at such a rate as is provided for by the provisions of the existing laws for each disability: *Provided*, That this act shall not be so construed as to reduce pensions in any case. *Act of February 28, 1877* (*19 Stat. L., 264*).

Pensions for loss of both hands, feet, or eyes.
June 17, 1878, v. 20, p. 144.

2125. On and after the passage of this act, all soldiers and sailors who have lost either both their hands or both their feet or the sight of both eyes in the service of the United States, shall receive, in lieu of all pensions now paid them by the Government of the United States, and there shall be paid to them, in the same manner as pensions are now paid to such persons, the sum of seventy-two dollars per month. *Act of June 17, 1878* (*20 Stat. L., 144*).

For total blindness.
Mar. 3, 1879, v. 20, p. 484.

2126. That the act of June seventeenth, eighteen hundred and seventy-eight, entitled "An act to increase the pensions of certain soldiers and sailors who have lost both their hands or both their feet, or the sight of both eyes, in the service of the country," be so construed as to include all soldiers and sailors who have become totally blind from causes occurring in the service of the United States. *Act of March 3, 1879 (20 Stat. L., 484).*

---

[1] Increased to seventy-two dollars per month by the act of June 16, 1880 (31 Stat. L., 281). This act became operative on June 4, 1874. Sec. 2, act of June 18, 1874 (18 Stat. L., 78).

Increase of pension.
June 16, 1880, v. 21, p. 281.

2127. All soldiers and sailors who are now receiving a pension of fifty dollars per month, under the provisions of an act entitled "An act to increase the pension of soldiers and sailors who have been totally disabled," approved June eighteenth, eighteen hundred and seventy-four, shall receive, in lieu of all pensions now paid them by the Government of the United States, and there shall be paid them in the same manner as pensions are now paid to such persons, the sum of seventy-two dollars per month.[1] *Act of June 16, 1880 (21 Stat. L., 281).*

Rate for loss of leg at hip joint.
Mar. 3, 1879, v. 20, p. 483.

2128. All pensioners now on the pension rolls, or who may hereafter be placed thereon, for amputation of either leg at the hip joint, shall receive a pension at the rate of thirty-seven dollars and fifty cents per month from the date of the approval of this act. *Act of March 3, 1879 (20 Stat. L., 483).*

Loss of arm at shoulder joint.
Mar. 3, 1885, v. 23, p. 437.

2129. All soldiers and sailors of the United States who have had an arm taken off at the shoulder joint, caused by injuries received in the service of their country while in the line of duty, and who are now receiving pensions, shall have their pensions increased to the same amount that the law now gives to soldiers and sailors who have lost a leg at the hip joint; and this act shall apply to all who shall be hereafter placed on the pension roll. *Act of March 3, 1885 (23 Stat. L., 437).*

Increase of pension of soldiers and sailors who have lost an arm or leg in service.
Mar. 3, 1883, v. 22, p. 453.

Loss of arm above elbow or leg above the knee.

2130. From and after the passage of this act all persons on the pension roll, and all persons hereafter granted a pension, who, while in the military or naval service of the United States, and in the line of duty, shall have lost one hand or one foot, or been totally or permanently disabled in the same, or otherwise so disabled as to render their incapacity to perform manual labor equivalent to the loss of a hand or a foot, shall receive a pension of twenty-four dollars per month; that all persons now on the pension roll, and all persons hereafter granted a pension, who in like manner shall have lost either an arm at or above the elbow, or a leg at or above the knee, or shall have been otherwise so disabled as to be incapacitated for performing any manual labor, but not so much as to require regular personal aid and attendance, shall receive a pension of thirty dollars per month: *Provided*, That nothing contained in this act shall be construed to repeal section forty-six hundred and ninety-nine of the Revised Statutes of the United States, or to change the rate of eighteen dollars per month therein mentioned to be proportionately divided for any degree of disability established for which section forty-six hundred and ninety-five makes no provision.[1] *Act of March 3, 1883 (22 Stat. L., 453).*

---

[1] Section 2 of the act of June 16, 1880 (21 Stat. L., 281), contained the requirement that persons therein entitled to increase of pension should be paid the difference between the sums above mentioned from June 17, 1878, to June 16, 1880.

Pensions, increased.
Loss of hand or foot.
Aug. 4, 1886, v. 24, p. 220.
Loss of arm at or above elbow; leg at or above knee.
Loss of arm at shoulder; leg at hip.
R. S., sec. 4699, p. 915, not repealed.

2131. From and after the passage of this act all persons on the pension rolls, and all persons hereafter granted a pension, who, while in the military or naval service of the United States, and in line of duty, shall have lost one hand or one foot, or been totally disabled in the same, shall receive a pension of thirty dollars a month; that all persons now on the pension rolls, and all persons hereafter granted a pension, who in like manner shall have lost either an arm at or above the elbow or a leg at or above the knee,[2] or been totally disabled in the same, shall receive a pension of thirty-six dollars per month; and that all persons now on the pension rolls, and all persons hereafter granted a pension, who in like manner shall have lost either an arm at the shoulder joint or a leg at the hip joint, or so near the joint as to prevent the use of an artificial limb, shall receive a pension at the rate of forty-five dollars per month: *Provided*, That nothing contained in this act shall be construed to repeal section forty-six hundred and ninety-nine[1] of the Revised Statutes of the United States, or to change the rate of eighteen dollars per month therein mentioned to be proportionately divided for any degree of disability established for which section forty-six hundred and ninety-five makes no provision. *Act of August 4, 1886 (24 Stat. L., 220).*

Rate for deafness increased.
Aug. 27, 1888, v. 25, p. 449.

2132. From and after the passage of this act all persons on the pension rolls of the United States, or who may hereafter be thereon, drawing pensions on account of loss of hearing, shall be entitled to receive, in lieu of the amount now paid in case of such disability, the sum of thirty dollars, in cases of total deafness, and such proportion thereof in cases of partial deafness as the Secretary of the Interior may deem equitable; the amount paid to be determined by the degree of disability existing in each case. *Act of August 27, 1888 (25 Stat. L., 449).*

---

[1] Paragraph 2136, *post*.

Pensions for loss of both hands increased.
Feb. 12, 1889, v, 25, p. 659.

2133. From and after the passage of this act all persons who, in the military or naval service of the United States and in the line of duty, have lost both hands, shall be entitled to a pension of one hundred dollars per month. *Act of February 12, 1889 (25 Stat. L., 659).*

Increase to totally helpless soldiers, etc.
Mar. 4, 1890, v. 26, p. 16.
V. 21, p. 281.

2134. All soldiers, sailors, and marines who have since the sixteenth day of June, eighteen hundred and eighty, or who may hereafter become so totally and permanently helpless from injuries received or disease contracted in the service and line of duty as to require the regular personal aid and attendance of another person, or who, if otherwise entitled, were excluded from the provisions of "An act to increase pensions of certain pensioned soldiers and sailors who are utterly helpless from injuries received or disease contracted while in the United States service," approved June sixteenth, eighteen hundred and eighty, shall be entitled to receive a pension at the rate of seventy-two dollars per month from the date of the passage of this act or of the certificate of the examining surgeon or board of surgeons showing such degree of disability made subsequent to the passage of this act. *Act of March 4, 1890 (26 Stat. L., 16).*

Rate where totally incapacitated, requiring frequent attendance.
July 14, 1892, v. 27, p. 149.

2135. Soldiers and sailors who are shown to be totally incapacitated for performing manual labor by reason of injuries received or disease contracted in the service of the United States and in line of duty, and who are thereby disabled to such a degree as to require frequent and periodical, though not regular and constant, personal aid and attendance of another person, shall be entitled to receive a pension of fifty dollars per month from and after the date of the certificate of the examining surgeon or board of examining surgeons showing such degree of disability, and made subsequent to the passage of this act. *Act of July 14, 1892 (27 Stat. L., 149).*

Pensions for disability not otherwise provided for.
Mar. 3, 1873, c. 234, s.5, v.17, p.569.
Sec. 4699, R.S.

2136. The rate of eighteen dollars per month may be proportionately divided for any degree of disability established for which section forty-six hundred and ninety-five makes no provision.[1]

---

[1] See acts of March 3, 1883 (22 Stat. L., 453), and August 4, 1886 (24 Ibid., 220), paragraphs 2130 and 2131, *ante.*

WIDOWS AND CHILDREN.

Par.
2137. Widows and children.
2138. Increase of pension for same.
2139. The same.
2140. Claim agent not recognized.
2141. To commence at death of husband.
2142. Proof of marriage, Indians and colored soldiers.
2143. Proof of marriage in general.
Par.
2144. Abandonment of children by widow.
2145. Dependent widow and minor children.
2146. Widow not to receive pension for same period as husband.
2147. Restriction on widow's pension.

Widows and children.
Aug. 7, 1882, v. 22, p. 345.
Sec. 4702, R.S.

2137. If any person embraced within the provisions of sections forty-six hundred and ninety-two[1] and forty-six hundred and ninety-three[1] has died since the fourth day of March, eighteen hundred and sixty-one, or hereafter dies, by reason of any wound, injury, or disease which under the conditions and limitations of such sections would have entitled him to an invalid pension had he been disabled, his widow, or if there be no widow, or in case of her death without payment to her of any part of the pension hereinafter mentioned, his child or children under sixteen years of age, shall be entitled to receive the same pension as the husband or father would have been entitled to had he been totally disabled, to commence from the death of the husband or father, to continue to the widow during her widowhood, and to his child or children until they severally attain the age of sixteen years, and no longer; and if the widow remarry, the child or children shall be entitled from the date of remarriage, except when such widow has continued to draw the pension money after her remarriage, in contravention of law, and such child or children have resided with and been supported by her, their pension will commence at the date to which the widow was last paid.[2] *Act of August 7, 1882 (22 Stat. L., 345).*

Increased pensions to widows, etc.
Sec. 4703, R.S.

2138. The pensions of widows shall be increased from and after the twenty-fifth day of July, eighteen hundred and sixty-six, at the rate of two dollars per month for each child under the age of sixteen years of the husband on account of whose death the claim has been, or shall be, granted. And in every case in which the deceased husband has left, or shall leave, no widow, or where his widow has died or married again, or where she has been deprived of her pension under the provisions of the pension law, the pension granted to such child or children shall be increased to the same amount per month that would be allowed under the foregoing provisions to the widow if living and entitled to a pension: *Provided*, That the additional pension herein granted to the widow on account of the child or children of the husband by a former wife shall be paid to her only for such period of her widowhood as she has been, or shall be, charged with the maintenance of such child or children; for any period during which she has not been, or she shall not be, so charged it shall be granted and paid to the guardian of such child or children: *Provided further*, That a widow or guardian to whom increase of pension has been, or shall hereafter be, granted on account of minor children shall not be deprived thereof by reason of their being maintained in whole or in part at the expense of a State or the public in any educational institution or in any institution organized for the care of soldiers' orphans.

---

[1] Paragraphs 2116 and 2117, *ante.*

[2] Amended by act of March 19, 1886 (24 Stat. L., 5). See also acts of June 9, 1880 (21 Stat. L., 170), and June 7, 1888 (25 Stat. L., 173).

Increase of pensions to widows and dependent relatives.
Mar. 19, 1886, v. 24, p. 5.

2139. From and after the passage of this act the rate of pension for widows, minor children, and dependent relatives now on the pension roll, or hereafter to be placed on the pension roll, and entitled to receive a less rate than hereinafter provided, shall be twelve dollars per month; and nothing herein shall be construed to affect the existing allowance of two dollars per month for each child under the age of sixteen years: *Provided*, That this act shall apply only to widows who were married to the deceased soldier or sailor prior to its passage and to those who may hereafter marry prior to or during the service of the soldier or sailor. And all acts or parts of acts inconsistent with the provisions of this act are hereby repealed.[1] *Section 1, act of March 19, 1886 (24 Stat. L., 5).*

Claim agents not to be recognized.
Sec. 2, *ibid.*

2140. No claim agent or attorney shall be recognized in the adjudication of claims under this act, nor shall any such person be entitled to receive any compensation whatever for services or pretended services in making applications thereunder. *Sec. 2, ibid.*

Widows' pensions to date from death of husband.
June 7, 1888, v. 25, p. 173.

2141. All pensions which have been, or which may hereafter be, granted under the general laws regulating pensions to widows in consequence of death occurring from a cause which originated in the service since the fourth day of March, eighteen hundred and sixty-one, shall commence from the date of death of the husband. *Act of June 7, 1888 (25 Stat. L., 173).*

---

[1] See in this connection paragraph 2145, *post;* section 3, act of May 9, 1900 (31 Stat. L., 171).

Widows of colored and Indian soldiers, etc.
Sec. 4705, R.S.

2142. The widows of colored and Indian soldiers and sailors who have died, or shall hereafter die, by reason of wounds or injuries received, or casualty received, or disease contracted, in the military or naval service of the United States, and in the line of duty, shall be entitled to receive the pension provided by law without other evidence of marriage than satisfactory proof that the parties were joined in marriage by some ceremony deemed by them obligatory, or habitually recognized each other as man and wife, and were so recognized by their neighbors, and lived together as such up to the date of enlistment, when such soldier or sailor died in the service, or, if otherwise, to date of death; and the children born of any marriage so proved shall be deemed and held to be lawful children of such soldier or sailor, but this section shall not be applicable to any claims on account of persons who enlist after the third day of March, one thousand eight hundred and seventy-three.

Marriages to be proven legal marriages under laws, etc.
Sec. 2, Aug. 7, 1882, v. 22, p. 345.

2143. Marriages, except such as are mentioned in section forty-seven hundred and five of the Revised Statutes, shall be proven in pension cases to be legal marriages according to the law of the place where the parties resided at the time of marriage or at the time when the right to pension accrued; and the open and notorious adulterous cohabitation of a widow who is a pensioner shall operate to terminate her pension from the commencement of such cohabitation. *Sec. 2, act of August 7, 1882 (22 Stat. L., 345).*

Abandonment, etc., by widow.
Sec. 4706, R.S.

2144. If any person has died, or shall hereafter die, leaving a widow entitled to a pension by reason of his death, and a child or children under sixteen years of age by such widow, and it shall be duly certified under seal by any court having probate jurisdiction, that satisfactory evidence has been produced before such court, upon due notice to the widow, that she has abandoned the care of such child or children, or that she is an unsuitable person, by reason of immoral conduct, to have the custody of the same, on presentation of satisfactory evidence thereof to the Commissioner of Pensions, no pension shall be allowed to such widow until such child or children shall have attained the age of sixteen years, any provisions of law to the contrary notwithstanding; and the said child or children shall be pensioned in the same manner, and from the same date, as if no widow had survived such person, and such pension shall be paid to the guardian of such child or children; but if in any case payment of pension shall have been made to the widow, the pension to the child or children shall commence from the date to which her pension has been paid.

2145. If any officer or enlisted man who served ninety days or more in the Army or Navy of the United States during the late war of the rebellion, and who was honorably discharged, has died, or shall hereafter die, leaving a widow without other means of support than her daily labor, and an actual net income not exceeding two hundred and fifty dollars per year, or minor children under the age of sixteen years, such widow shall, upon due proof of her husband's death, without proving his death to be the result of his army service, be placed on the pension roll from the date of the application therefor under this act, at the rate of eight dollars per month during her widowhood, and shall also be paid two dollars per month for each child of such officer or enlisted man under sixteen years of age, and in case of the death or remarriage of the widow, leaving a child or children of such officer or enlisted man under the age of sixteen years, such pension shall be paid such child or children until the age of sixteen: *Provided*, That in case a minor child is insane, idiotic, or otherwise permanently helpless, the pension shall continue during the life of said child, or during the period of such disability, and this proviso shall apply to all pensions heretofore granted or hereafter to be granted under this or any former statute, and such pensions shall commence from the date of application therefor, after the passage of this act: *And provided further*, That said widow shall have married said soldier prior to the passage of the said act of June 27, 1890.[1] *Sec. 3, act of May 9, 1900 (31 Stat. L., 171).*

Dependent widows and minor children.
Widow.
Minor children.
Proof of husband's death.
Rate during widowhood.
Rate for each minor child.
Death or remarriage of widow.
May 9, 1900, s. 2, v. 31, p. 171.
Provisos.
Continuing pension to minor child during permanent disability.
Application to all pensions.
Commencement.
Limit as to time of marriage.

2146. No pension shall be granted to a widow for the same time that her husband received one.

Restriction.
Sec. 4735, R.S.

2147. Hereafter no pension under any law of the United States shall be granted, allowed, or paid to the widow of a soldier, sailor, officer, naval or military, marine, marine officer, or any other male person entitled to a pension under any law of the United States, unless it shall be proved and established that the marriage of such widow to the soldier, sailor, officer, marine, or other person on account of whose service the pension is asked, was duly and legally contracted and entered into prior to the passage of this act, or unless such wife shall have lived and cohabited with such soldier, sailor, officer, marine, marine

Restriction on granting of pensions to widows.
Mar. 3, 1899, v. 30, p. 1379.
Sec. 4766, R.S.

officer, or other person continuously from the date of the marriage to the date of his death, or unless the marriage shall take place hereafter and prior to or during the military or naval service of the soldier, sailor, officer, marine, or other person on account of whose service the pension is asked or claimed. This proviso shall not apply to or affect the widow of any soldier, sailor, marine, officer, or marine officer serving or who has served in the war between the United States and the Kingdom of Spain.

In all cases the questions of desertion, entrance into a home, necessitous circumstances, and of good moral character shall be ascertained and determined by the Commissioner of Pensions under such rules and regulations as he shall prescribe, and the treasurers or governors of the several soldiers' and sailors' homes shall be advised of such action from time to time.[1] *Act of March 3, 1899 (30 Stat. L., 1379).*

* * * * *

DEPENDENT RELATIVES.

Par.
2148. Succession of dependent relatives.
2149. Remarriage of widow.
Par.
2150. Dependent parents.

Succession of dependent relatives.
Mar. 3, 1873, s. 13, v. 17, p. 571.
Sec. 4707, R.S.

2148. If any person embraced within the provisions of sections forty-six hundred and ninety-two and forty-six hundred and ninety-three has died since the fourth day of March, eighteen hundred and sixty-one, or shall hereafter die, by reason of any wound, injury, casualty, or disease, which, under the conditions and limitations of such sections, would have entitled him to an invalid pension, and has not left or shall not leave a widow or legitimate child, but has left or shall leave other relative or relatives who were dependent upon him for support, in whole or in part, at the date of his death, such relative or relatives shall be entitled, in the following order of precedence, to receive the same pension as such person would have been entitled to had he been totally disabled, to commence from the death of such person, namely: First, the mother; secondly, the father; thirdly, orphan brothers and sisters under sixteen years of age, who shall be pensioned jointly: *Provided*, That where orphan children of the same parent have different guardians, or a portion of them only are under guardianship, the share of the joint pension to which each ward shall be entitled shall be paid to the guardian of such ward: *Provided*, That if in any case said person shall have left father and mother who were dependent upon him, then, on the death of the mother, the father shall become entitled to the pension, commencing from and after the death of the mother; and upon the death of the mother and father, or upon the death of the father and the remarriage of the mother, the dependent brothers and sisters under sixteen years of age shall jointly become entitled to such pension until they attain the age of sixteen years, respectively, commencing from the death or remarriage of the party who had the prior right to the pension: *Provided*, That a mother shall be assumed to have been dependent upon her son within the meaning of this section if, at the date of his death, she had no other adequate means of support than the ordinary proceeds of her own manual labor and the contributions of said son or of any other persons not legally bound to aid in her support; and if, by actual contributions, or in any other way, the son had recognized his obligations to aid in support of his mother, or was by law bound to such support, and that a father or minor brother or sister shall, in like manner and under like conditions, be assumed to have been dependent, except that the income which was derived or derivable from his actual or possible manual labor shall be taken into account in estimating a father's means of independent support: *Provided further*, That the pension allowed to any person on account of his or her dependence, as hereinbefore provided, shall not be paid for any period during which it shall not be necessary as a means of adequate subsistence.

---

[1] For the remainder of this statute see the Title "The Dependent Pension Law," paragraphs 2151 to 2154, *post.* For a restriction on attorneys' fees in claims to pension under this act, see section 4, act of June 27, 1890 (26 Stat. L., 181). This section replaces section 3, act of June 27, 1890, and is amendatory thereof; it also excepts all cases falling within its scope from the operation of the act of June 7, 1888 (25 Stat. L., 173), paragraph 2141, *ante.* See also the act of March 3, 1901 (31 Stat. L., 1445), par. 2149, *post.*

Remarriage of widow.
Mar. 3, 1901, v. 31, p. 1445.
Sec. 4708, R. S.

2149. The remarriage of any widow, dependent mother, or dependent sister entitled to pension shall not bar her right to such pension to the date of her remarriage, whether an application therefor was filed before or after such marriage; but on the remarriage of any widow, dependent mother, or dependent sister having a pension, such pension shall cease: *Provided*, *however*, That any widow who was the lawful wife of any officer or enlisted man in the Army, Navy, or Marine Corps of the United States, during the period of his service in any war, and whose name was placed or shall hereafter be placed on the pension roll because of her husband's death as the result of wound or injury received or disease contracted in such military or naval service, and whose name has been or shall hereafter be dropped from said pension roll by reason of her marriage to another person who has since died or shall hereafter die, or from whom she has been heretofore or shall be hereafter divorced, upon her own application and without fault on her part, and if she is without means of support other than her daily labor as defined by the acts of June twenty-seventh, eighteen hundred and ninety, and May ninth, nineteen hundred, shall be entitled to have her name again placed on the pension roll at the rate now provided for widows by the acts of July fourteenth, eighteen hundred and sixty-two, March third, eighteen hundred and seventy-three, and March nineteenth, eighteen hundred and eigthy-six, such pension to commence from the date of the filing of her application in the Pension Bureau after the approval of this act: *And provided further*, That where such widow is already in receipt of a pension from the United States she shall not be entitled to restoration under this act: *And provided further*, That where the pension of said widow on her second or subsequent marriage has accrued to a helpless or idiotic child, or a child or children under the age of sixteen years, she shall not be entitled to restoration under this act unless said helpless or idiotic child, or child or children under sixteen years of age, be then a member or members of her family and cared for by her, and upon the restoration of said widow the payment of pension to said child or children shall cease. *Act of March 3, 1901 (31 Stat. L., 1445).*

Sec. 2, *ibid.*

No claim agent or other person shall be entitled to receive any compensation for services in making application for pension under this act. *Section 2, ibid.*

Disability, etc., pensions.

Granted to certain soldiers and sailors, widows, children, and dependent parents.

Claims of dependent parents.

Evidence required.

June 27, 1890, v. 26, p. 182.

2150. In considering the pension claims of dependent parents, the fact of the soldier's death by reason of any wound, injury, casualty, or disease, which, under the conditions and limitations of existing laws, would have entitled him to an invalid pension, and the fact that the soldier left no widow or minor children having been shown as required by law, it shall be necessary only to show by competent and sufficient evidence that such parent or parents are without other present means of support than their own manual labor or the contributions of others not legally bound for their support: *Provided*, That all pensions allowed to dependent parents under this act shall commence from the date of the filing of the application hereunder, and shall continue no longer than the existence of the dependence. *Sec. 1, act of June 27, 1890 (26 Stat. L., 182).*

Commencement and continuance of pensions.

THE DEPENDENT PENSION LAW.

Par.
2151. Pension to dependent soldiers.
2152. Missouri militia included.
Par.
2153. Fees of attorneys.
2154. Commencement of pension.

2151. All persons who served ninety days or more in the military or naval service of the United States during the late war of the rebellion and who have been honorably discharged therefrom, and who are now or who may hereafter be suffering from a mental or physical disability, or disabilities of a permanent character, not the result of their own vicious habits, which incapacitates them from the performance of manual labor in such a degree as to render them unable to earn a support, shall, upon making due proof of the fact according to such rules and regulations as the Secretary of the Interior may provide, be placed upon the list of invalid pensioners of the United States, and be entitled to receive a pension not exceeding twelve dollars per month, and not less than six dollars per month, proportioned to the degree of inability to earn a support; and in determining such inability, each and every infirmity shall be duly considered, and the aggregate of the disabilities shown be rated, and such pension shall commence from the date of the filing of the application in the Pension Office, after the passage of this act upon proof that the disability then existed, and shall continue during the existence of the same: *Provided*, That persons who are now receiving pensions under existing laws, or whose claims are pending in the Bureau of Pensions, may, by application to the Commissioner of Pensions, in such form as he may prescribe, showing themselves entitled thereto, receive the benefits of this act; and nothing herein contained shall be so construed as to prevent any pensioner thereunder from prosecuting his claim and receiving his pension under any other general or special act: *Provided, however*, That no person shall receive more than one pension for the same period: *And provided further*, That rank in the service shall not be considered in applications filed under this act.[1] *Sec. 2, act of May 9, 1900 (31 Stat. L., 170).*

Invalid pensions to disabled soldiers and sailors who served ninety days in war of rebellion.

May 9, 1900, v. 31, p. 170.

Due proof, etc.

Maximum and minimum pension.

Proportionate inability.

Commencement and continuance.

Pensioners entitled under this or other acts not barred from further benefits.

Only one pension at a time.

Service rank not considered.

---

[1] This section replaces section 2, act of June 27, 1890 (26 Stat. L., 182).

Missouri militia.
J. R. No. 13, Feb. 15, 1895, v. 28, p. 970.

2152. The provisions of the act of June twenty-seventh, eighteen hundred and ninety, are hereby extended to include the officers and privates of the Missouri State militia and the Provisional Missouri militia who served ninety days during the late war of the rebellion, and were honorably discharged, and to the widows and minor children of such persons. The provisions of this act shall include all such persons now on the pension rolls, or who may hereafter apply to be admitted thereto. *Joint Resolution No. 13, February 15, 1895 (28 Stat. L., 970).*

Fees of attorney for prosecuting claims.
Sec. 4, *ibid.*

2153. That no agent, attorney, or other person engaged in preparing, presenting, or prosecuting any claim under the provisions of this act shall, directly or indirectly, contract for, demand, receive, or retain for such services in preparing, presenting, or prosecuting such claim a sum greater than ten dollars, which sum shall be payable only upon the order of the Commissioner of Pensions by the pension agent making payment of the pension allowed, and any person who shall violate any of the provisions of this section, or who shall wrongfully withhold from a pensioner or claimant the whole or any part of a pension or claim allowed or due such pensioner or claimant under this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall, for each and every such offense, be fined not exceeding five hundred dollars or be imprisoned at hard labor not exceeding two years, or both, in the discretion of the court. *Sec. 4, act of June 27, 1890 (26 Stat. L., 183).*

Maximum fee.
How payable.

Violation, or wrongful withholding a misdemeanor.

Penalty.

Commencement of pension.
Mar. 6, 1896, v. 29, p. 45.

2154. Whenever a claim for pension under the act of June twenty-seventh, eighteen hundred and ninety, has been, or shall hereafter be, rejected, suspended, or dismissed, and a new application shall have been, or shall hereafter be, filed, and a pension has been, or shall hereafter be, allowed in such claim, such pension shall date from the time of filing the first application, provided the evidence in the case shall show a pensionable disability to have existed, or to exist, at the time of filing such application, anything in any law or ruling of the Department to the contrary notwithstanding.[1] *Act of March 6, 1896, (29 Stat. L., 45).*

PENSIONS TO ARMY NURSES.

Army nurses to receive pensions.
Aug. 5, 1892, v. 27, p. 348.

2155. All women employed by the Surgeon-General of the Army as nurses, under contract or otherwise, during the late war of the rebellion, or who were employed as nurses during such period by authority which is recognized by the War Department, and who rendered actual service as nurses in attendance upon the sick or wounded in any regimental, post, camp, or general hospital of the armies of the United States for a period of six months or more, and who were honorably relieved from such service, and who are now or may hereafter be unable to earn a support, shall, upon making due proof of the fact according to such rules and regulations as the Secretary of the Interior may provide, be placed upon the list of pensioners of the United States and be entitled to receive a pension of twelve dollars per month, and such pension shall commence from the date of filing of the application in the Pension Office after the passage of this act: *Provided*, That no person shall receive more than one pension for the same period. *Act of August 5, 1892 (27 Stat. L., 348).*

---

[1] For the section of the Dependent Pension Law in relation to dependent widows and minor children, see paragraph 2145, *ante.*

Rate.

To receive only one pension.

2156. No fee, compensation, or allowance shall be paid to, received, or accepted by any agent, attorney, or other person instrumental in the prosecution of any claim for pension under this act; and any person who may make any claim upon any applicant for any fee, compensation, or allowance shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding five hundred dollars or imprisoned at hard labor not exceeding one year, or both, in the discretion of the court; and it shall be the duty of the Interior and War Departments to render all proper aid to applicants under this act. *Sec. 2, ibid.*

No fee to agent, etc.

Penalty for claiming.
Sec. 2, *ibid.*

MEXICAN WAR PENSIONS.

Par.
2157. Who entitled.
2158. Widows and children.
2159. Extension of benefits.
2160. Rate.
2161. Regulations by Secretary of Interior.

Par.
2162. Pension laws applicable.
2163. Removal of disability.
2164. The same, restriction.
2165. Increased rate.
2166. Extended to all survivors.

2157. Any officer, noncommissioned officer, musician, or private, whether of the Regular Army or Volunteers, disabled by reason of injury received or disease contracted while in the line of duty in actual service in the war with Mexico, or in going to or returning from the same, who received an honorable discharge, shall be entitled to a pension proportionate to his disability, not exceeding for

Pensions to soldiers of Mexican war.
May 13, 1846, c. 16, s. 7, v. 9, p. 10.
Sec. 4730, R.S.

total disability half the pay of his rank at the date at which he received the wound or contracted the disease which resulted in such disability. But no pension shall exceed half the pay of a lieutenant-colonel.

Widows and children.
Mar. 3, 1873, c. 234, s. 18, v. 17, p. 572.
Sec. 4731, R.S.

2158. If any officer or other person referred to in the preceding section has died or shall hereafter die by reason of any injury received or disease contracted under the circumstances therein set forth, his widow shall be entitled to receive the same pension as the husband would have been entitled to had he been totally disabled; and in case of her death or remarriage, the child or children of such officer or other person referred to in the preceding section, while under the age of sixteen years, shall be entitled to receive the pension. But the rate of pension prescribed by this and the preceding section shall be varied after the twenty-fifth day of July, eighteen hundred and sixty-six, in accordance with the provisions of section four thousand seven hundred and twelve of this Title.

Extension of benefits.
Jan. 29, 1887, s. 1, v. 24, p. 371.

2159. The Secretary of the Interior be, and he is hereby, authorized and directed to place on the pension roll the names of the surviving officers and enlisted men, including marines, militia, and volunteers, of the military and naval services of the United States, who, being duly enlisted, actually served sixty days with the Army or Navy of the United States in Mexico, or on the coasts or frontier thereof, or *en route* thereto, in the war with that nation, or were actually engaged in a battle in said war, and were honorably discharged, and to such other officers and soldiers and sailors as may have been personally named in any resolution of Congress for any specific service in said war, and the surviving widow of such officers and enlisted men: *Provided*, That such widows have not remarried: *Provided*, That every such officer, enlisted man, or widow who is or may become sixty-two years of age, or who is or may become subject to any disability or dependency equivalent to some cause prescribed or recognized by the pension laws of the United States as a sufficient reason for the allowance of a pension, shall be entitled to the benefits of this act; but it shall not be held to include any person not within the rule of age or disability or dependence herein defined, or who incurred such disability while in any manner voluntarily engaged in or aiding or abetting the late rebellion against the authority of the United States. *Act of January 29, 1887 (24 Stat. L., 371).*

Provisos. Widows.

Disabilities.

Persons excluded.

Rate.

2160. Pensions under section one of this act shall be at the rate of eight dollars per month,[1] and payable only from and after the passage of this act, for and during the natural lives of the persons entitled thereto, or during the continuance of the disability for which the same shall be granted: *Provided*, That section one of this act shall not apply to any person who is receiving a pension at the rate of eight dollars per month or more, nor to any person receiving a pension of less than eight dollars per month, except for the difference between the pension now received (if less than eight dollars per month) and eight dollars per month.[2] *Sec. 2, ibid.*

Proviso. Effect on existing pensions. Sec. 2, *ibid.*

2161. Before the name of any person shall be placed on the pension roll under this act, proof shall be made, under such rules and regulations as the Secretary of the Interior may prescribe, of the right of the applicant to a pension; and any person who shall falsely and corruptly take any oath required under this act shall be deemed guilty of perjury; and the Secretary of the Interior shall cause to be stricken from the pension roll the name of any person whenever it shall be made to appear by proof satisfactory to him that such name was put upon such roll through false and fraudulent representations, and that such person is not entitled to a pension under this act. The loss of the certificate of discharge shall not deprive any person of the benefits of this act, but other record evidence of enlistment and service and of an honorable discharge may be deemed sufficient: *Provided*, That when any person has been granted a land warrant, under any act of Congress, for and on account of service in the said war with Mexico, such grant shall be *prima facie* evidence of his service and honorable discharge, but such evidence shall not be conclusive, and may be rebutted by evidence that such land warrant was improperly granted. *Sec. 3, ibid.*

Secretary of the Interior to prescribe rules, etc.

Sec. 3, *ibid.*

Proviso. Land warrant to be *prima facie* evidence of service.

2162. The pension laws now in force which are not inconsistent or in conflict with this act are hereby made a part of this act, so far as they may be applicable thereto. *Sec. 4, ibid.*

Pension laws made applicable. Sec. 4, *ibid.*

2163. Section forty-seven hundred and sixteen of the Revised Statutes is hereby repealed so far as the same relates to this act or to pensioners under this act. *Sec. 5, ibid.*

R. S. sec. 4716, p. 919, not to apply. Sec. 5, *ibid.*

---

[1] By the acts of January 5, 1893 (27 Stat. L., 413), and April 23, 1900 (31 ibid., 137), paragraphs 2165 and 2166 *post*, this rate was increased to twelve dollars per month under certain conditions therein set forth.

[2] Increased to twelve dollars per month in certain cases by acts of January 5, 1893 (27 Stat. L., 413), and April 23, 1900 (31 Stat. L., 137), paragraphs 2165 and 2166 *post.*

Persons under political disabilities not included. Sec. 6, *ibid.*

2164. The provisions of this act shall not apply to any person while under the political disabilities imposed by the fourteenth amendment to the Constitution of the United States. *Sec. 6, ibid.*

Increased rate. Jan. 5, 1893, v. 27, p. 413.

2165. The Secretary of the Interior is hereby authorized to increase the pension of every pensioner who is now on the rolls at eight dollars per month on account of services in the Mexican War and who is wholly disabled for manual labor, and is in such destitute circumstances that eight dollars per month are insufficient to provide him the necessaries of life, to twelve dollars per month. *Act of January 5, 1893 (27 Stat. L., 413).*

Extended to all survivors. Apr. 23, 1900, v. 31, p. 137.

2166. The benefits of the act entitled "An act granting increase of pension to soldiers of the Mexican war in certain cases," approved January fifth, eighteen hundred and ninety-three,[1] be, and they are hereby, extended to all survivors of the Mexican war who are pensionable under existing Mexican war service pension laws, and who have become or may hereafter become wholly disabled for manual labor, and in such destitute circumstances that eight dollars per month are insufficient to provide them the necessaries of life, irrespective of the date of the granting of the said service pension. *Act of April 23, 1900 (31 Stat. L., 137).*

PENSIONS FOR INDIAN WARS, 1832–1842.[1]

Par.
2167. Who entitled.
2168. Rate.
2169. Proof.
2170. Restriction on application.

Par.
2171. Pension laws applicable.
2172. Removal of disability.
2173. Widows.
2174. Citizenship.

Indian wars prior to 1842. Pensions for service in. July 27, 1892, v. 27, p. 281.

2167. The Secretary of the Interior is hereby authorized and directed to place on the pension roll the names of the surviving officers and enlisted men, including marines, militia, and volunteers of the military and naval service of the United States, who served for thirty days in the Black Hawk war, the Creek war, the Cherokee disturbances, or the Florida war with the Seminole Indians, embracing a period from eighteen hundred and thirty-two to eighteen hundred and forty-two, inclusive, and were honorably discharged, and such other officers, soldiers, and sailors as may have been personally named in any resolution of Congress, for any specific service in said Indian wars, although their term of service may have been less than thirty days, and the surviving widows of such

Widows.

Remarriage.

Persons not citizens.

officers and enlisted men: *Provided*, That such widows have not remarried: *Provided further*, That this act shall not apply to any person not a citizen of the United States. *Act of July 27, 1892 (27 Stat. L., 281).*

Rate. Sec. 2, ibid.

2168. Pensions under this act shall be at the rate of eight dollars per month, and payable from and after the passage of this act, for and during the natural lives of the persons entitled thereto. *Sec. 2, ibid.*

Proof.

Penalty for false swearing, etc. Sec. 3, ibid.

Loss of discharge certificate not a bar.

2169. Before the name of any person shall be placed on the pension roll under this act, proof shall be made, under such rules and regulations as the Secretary of the Interior may prescribe, of the right of the applicant to a pension; and any person who shall falsely and corruptly take any oath required under this act shall be deemed guilty of perjury; and the Secretary of the Interior shall cause to be stricken from the pension roll the name of any person whenever it shall be made to appear by proof satisfactory to him that such name was put upon such roll through false and fraudulent representations, and that such person is not entitled to a pension under this act. The loss of the certificate of discharge shall not deprive any person of the benefits of this act, but other evidence of service performed and of an honorable discharge may be deemed sufficient. *Sec. 3, ibid.*

Not to apply to certain pensioners. Sec. 4, ibid.

2170. This act shall not apply to any person who is receiving a pension at the rate of eight dollars per month or more, nor to any person receiving a pension of less than eight dollars per month, except for the difference between the pension now received (if less than eight dollars per month) and eight dollars per month. *Sec. 4, ibid.*

Pension laws applicable. Sec. 5, ibid.

2171. The pension laws now in force, which are not inconsistent or in conflict with this act, are hereby made a part of this act, so far as they may be applicable thereto.[1] *Sec. 5, ibid.*

---

[1] *Revolutionary pensions.*—For statutes granting pensions for services in the war of the Revolution, see the acts of April 10, 1806 (2 Stat. L., 376), April 25, 1812 (2 Stat. L., 719), March 18, 1818 (3 Stat. L., 410), May 15, 1820 (3 Stat. L., 597), February 4, 1822 (3 Stat. L., 650), March 1, 1823 (3 Stat. L., 787), May 15, 1828 (4 Stat. L., 269), May 31, 1830 (4 Stat. L., 426), June 7, 1832 (4 Stat. L., 529), July 14, 1832 (4 Stat. L., 529), February 19, 1833 (4 Stat. L., 612), July 4, 1836 (5 Stat. L., 128), March 3, 1837 (5 Stat. L., 187), February 2, 1848 (9 Stat. L., 210), July 29, 1848 (9 Stat. L., 266), February 3, 1853 (10 Stat. L., 154), February 28, 1855 (10 Stat. L., 616), March 9, 1878 (20 Stat. L., 29), March 19, 1886 (24 Stat. L., 5), and sections 4716 and 4743, Revised Statutes.

War of 1812.—For statutes granting pensions for services in the war of 1812 see the acts of January 11, 1812 (2 Stat. L., 673), February 6, 1812 (2 Stat. L., 677), August 2, 1813 (3 Stat. L., 74), April 16, 1816 (3 Stat. L., 286), April 4, 1842 (5 Stat. L., 473), March 9, 1878 (20 Stat. L., 27), March 19, 1886 (24 Stat. L., 5), and sections 4712, 4713, 4732, 4737, 4738, 4739, and 4740, Revised Statutes.

Loyalty.
Sec. 6, ibid.

2172. Section forty-seven hundred and sixteen of the Revised Statutes is hereby repealed, so far as the same relates to this act or to pensioners under this act. *Sec. 6, ibid.*

Widows and children of pensioners of war of 1812 and Indian wars.
Feb. 14, 1871, c. 50, v. 16, p. 411.
Sec. 4732, R.S.

2173. The widows and children under sixteen years of age of the officers, noncommissioned officers, musicians, and privates of the regulars, militia, and volunteers of the war of one thousand eight hundred and twelve and the various Indian wars since one thousand seven hundred and ninety who remained at the date of their death in the military service of the United States, or who received an honorable discharge and have died or shall hereafter die of injury received or disease contracted in the service and in the line of duty shall be entitled to receive half the monthly pay to which the deceased was entitled at the time he received the injury or contracted the disease which resulted in his death. But no half-pay pension shall exceed the half pay of a lieutenant-colonel, and such half-pay pension shall be varied after the twenty-fifth day of July, one thousand eight hundred and sixty-six, in accordance with the provisions of section four thousand seven hundred and twelve of this title.

Citizenship.
Feb. 3, 1892, v. 27, p. 429.

2174. The Commissioner of Pensions is hereby authorized and directed to accept as sufficient proof of the citizenship of an applicant for pension under the act of July twenty-seventh, eighteen hundred and ninety-two, the fact that said applicant at the date of the application was an actual and bona fide resident of the United States. *Act of February 3, 1892 (27 Stat. L., 429).*

PENSIONS ON SPECIAL ACTS.

Certain pensions equalized.
June 6, 1874, v. 18, p. 61.

2175. All persons entitled to pensions under special acts fixing the rate of such pensions, and now receiving or entitled to receive a less pension than that allowed by the general pension laws under like circumstances, are, in lieu of their present rate of pension, hereby declared to be entitled to the benefits and subject to the limitations of the general pension laws entitled "An act to revise, consolidate, and amend the laws relating to pensions," approved March third, eighteen hundred and seventy-three; and that this act go into effect from and after its passage: *Provided*, That this act shall not be construed to reduce any pension granted by special act. *Act of June 6, 1874 (18 Stat. L., 61).*

Pensions granted by special act not reduced.

Pensions under special acts of Congress.
Sec. 4720, R.S.

2176. When the rate, commencement, and duration of a pension allowed by special act are fixed by such act, they shall not be subject to be varied by the provisions and limitations of the general pension laws, but when not thus fixed the rate and continuance of the pension shall be subject to variation in accordance with the general laws, and its commencement shall date from the passage of the special act, and the Commissioner of Pensions shall, upon satisfactory evidence that fraud was perpetrated in obtaining such special act, suspend payment thereupon until the propriety of repealing the same can be considered by Congress. *See act of June 6, 1874 (18 Stat. L., 61).*

Pensioners under special law not to receive any other relief unless, etc.
Sec. 5, July 25, 1882, v. 22, p. 176.

2177. No person who is now receiving or shall hereafter receive a pension under a special act shall be entitled to receive in addition thereto a pension under the general law unless the special act expressly states that the pension granted thereby is in addition to the pension which said person is entitled to receive under the general law. *Sec. 5, act of July 25, 1882 (22 Stat. L., 176).*

COMMENCEMENT OF PENSION—ARREARS OF PENSION.

Par.
2178, 2179. Commencement.
2180. Rate of arrears.
2181. Date of commencement.
2182. Accrument of pension.
Par.
2183. Arrears of pension.
2184. No fees in arrear cases.
2185. Commencement of pensions for prior wars.

Commencement.
Sec. 1, Jan. 25, 1879, v. 20, p. 205.

2178. All pensions which have been granted under the general laws regulating pensions, or may hereafter be granted, in consequence of death from a cause which originated in the United States service during the continuance of the late war of the rebellion or in consequence of wounds, injuries, or disease received or contracted in said service during said war of the rebellion, shall commence from the date of the death or discharge from said service of the person on whose account the claim has been or shall hereafter be granted, or from the termination of the right of the party having prior title to such pension: *Provided*, The rate of pension for the intervening time for which arrears of pension are hereby granted shall be the same per month for which the pension was originally granted.[1] *Sec. 1, act of January 25, 1879 (20 Stat. L., 265).*

Rate.

The same.
Mar. 3, 1879, v. 20, p. 470.

2179. Section one of the act of January twenty-fifth, eighteen hundred and seventy-nine, granting arrears of pensions shall be construed to extend to and include pensions on account of soldiers who were enlisted or drafted for the service in the war of the rebellion, but died or incurred disability from a cause originating after the cessation of hostilities and before being mustered out: *Provided*, That in no case shall arrears of pensions be allowed and paid from a time prior to the date of actual disability. *Act of March 3, 1879 (20 Stat. L., 470).*

---

[1] Section 2 of the act of January 25, 1879 (20 Stat. L., 265), authorizes the Secretary of the Interior to "adopt such rules and regulations for the payment of the arrears of pensions hereby granted as will be necessary to cause to be paid to such pensioners, or, if the pensioners shall have died, to the person or persons entitled to the same; all such arrears of pension as the pensioner may be, or would have been, entitled to under this act."

Rate of arrears. Mar. 3, 1879, v. 20, p. 470.

2180. The rate at which the arrears of invalid pensions shall be allowed and computed in the cases which have been or shall hereafter be allowed shall be graded according to the degree of the pensioner's disability from time to time and the provisions of the pension laws in force over the period for which the arrears shall be computed. *Act of March 3, 1879 (20 Stat. L., 470).*

Date of commencement. Sec. 2, *ibid.*

2181. All pensions which have been or which may hereafter be granted in consequence of death occurring from a cause which originated in the service since the fourth day of March, eighteen hundred and sixty-one, or in consequence of wounds or injuries received or disease contracted since that date, shall commence from the death or discharge of the person on whose account the claim has been or is hereafter granted if the disability occurred prior to discharge, and if such disability occurred after the discharge then from the date of actual disability or from the termination of the right of party having prior title to such pension: *Provided*, The application for such pension has been or is hereafter filed with the Commissioner of Pensions prior to the first day of July, eighteen hundred and eighty, otherwise the pension shall commence from the date of filing the application; but the limitation herein prescribed shall not apply to claims by or in behalf of insane persons and children under sixteen years of age. *Sec. 2, ibid.*

Limitation.

When pension deemed to have accrued. Mar. 3, 1873, s. 16, v. 17, p. 569. Sec. 4710, R. S.

2182. In construing the preceding section,[1] the right of persons entitled to pensions shall be recognized as accruing at the date therein stated for the commencement of such pension, and the right of a dependent father or dependent brother to pension shall not in any case be held to have accrued prior to the sixth day of June, eighteen hundred and sixty-six; and the right of all other classes of claimants, if applying on account of the death of a person who was regularly mustered into the service or regularly employed in the Navy or upon the gunboats or war vessels of the United States, shall not be held to have accrued prior to the fourteenth day of July, eighteen hundred and sixty-two; if applying on account of a chaplain of the Army, their right shall not be held to have accrued prior to the ninth day of April, eighteen hundred and sixty-four; if applying on account of an enlisted soldier who was not mustered, or a nonenlisted man in temporary service, their right shall not be held to have accrued prior to the fourth day of July, eighteen hundred and sixty-four; if applying on account of an acting assistant or contract surgeon, their right shall not be held to have accrued prior to the third day of March, eighteen hundred and sixty-five; if applying on account of persons enlisted as teamsters, wagoners, artificers, hospital stewards, or farriers, their right shall not be held to have accrued prior to the sixth day of June, eighteen hundred and sixty-six; and the right of all classes of claimants applying on account of a provost marshal, deputy provost marshal, or enrolling officer shall not be held to have accrued prior to the twenty-fifth day of July, eighteen hundred and sixty-six. But the right of a widow or dependent mother who married prior and did not apply till subsequent to the twenty-seventh day of July, eighteen hundred and sixty-eight, shall not be held to have accrued prior to that date.

---

[1] The section above referred to is section 4709 of the Revised Statutes, which was expressly repealed by the act of March 3, 1879 (20 Stat. L., 469).

Arrears of pension.
Sec. 4711, R. S.

2183. It shall be the duty of the Commissioner of Pensions, upon any application by letter or otherwise by or on behalf of any pensioner entitled to arrears of pension under section forty-seven hundred and nine,[1] or if any such pensioner has died, upon a similar application by or on behalf of any person entitled to receive the accrued pension due such pensioner at his death, to pay or cause to be paid to such pensioner, or other person, all such arrears of pension as the pensioner may be entitled to, or, if dead, would have been entitled to under the provisions of that section had he survived; and no claim agent or other person shall be entitled to receive any compensation for services in making application for arrears of pension.

No fees in arrears of pension cases.
July 4, 1884, s. 4, v. 23, p. 99.

2184. No fee shall be demanded, received, or allowed in any claim for arrears of pension, or arrears of increase of pension allowed by any act of Congress passed subsequent to the date of the allowance of the original claims in which such arrears of pension or of increase of pension may be allowed.[1] *Sec. 4, act of July 4, 1884 (23 Stat. L., 99).*

---

[1] The section above referred to is section 4709 of the Revised Statutes, which was expressly repealed by the act of March 3, 1879 (20 Stat. L., 469).

Commencement of pensions for prior wars.
Sec. 4713, R. S.

2185. In all cases in which the cause of disability or death originated in the service prior to the fourth day of March, eighteen hundred and sixty-one, and an application for pension shall not have been filed within three years from the discharge or death of the person on whose account the claim is made, or within three years of the termination of a pension previously granted on account of the service and death of the same person, the pension shall commence from the date of filing by the party prosecuting the claim the last paper requisite to establish the same. But no claim allowed prior to the sixth day of June, eighteen hundred and sixty-six, shall be affected by anything herein contained.

INCREASE OF PENSIONS.

Par.
2186. Increase of pensions.
2187. Minimum rate to be six dollars.
Par.
2188. No fee for increase claims; penalty for taking illegal fee; pending contracts.

Increase of pensions.
Mar. 3, 1873, c. 234, s. 4, v. 17, p. 569; June 18, 1874, c. 298, v. 18, p. 78.
Sec. 4698½, R. S.

2186. Except in cases of permanent specific disabilities, no increase of pension shall be allowed to commence prior to the date of the examining surgeon's certificate establishing the same made under the pending claim for increase; and in this, as well as all other cases, the certificate of an examining surgeon, or of a board of examining surgeons, shall be subject to the approval of the Commissioner of Pensions.

Six dollars a month made minimum rate,
Mar. 2, 1895, v. 28, p. 704.

2187. From and after the passage of this act, all pensioners now on the rolls, who are pensioned at less than six dollars per month, for any degree of pensionable disability, shall have their pensions increased to six dollars per month; and that hereafter, whenever any applicant for pension would, under existing rates, be entitled to less than six dollars for any single disability, or several combined disabilities, such pensioner shall be rated at not less than six dollars per month: *Provided also*, That the provisions hereof shall not be held to cover any pensionable period prior to the passage of this act, nor authorize a rerating of any claims for any part of such period, nor

No prior effect.

---

[1] This statute replaces section 4 of the act of January 25, 1879 (20 Stat. L., 265).

prevent the allowance of lower rates than six dollars per month, according to the existing practice in the Pension Office in pending cases covering any pensionable period prior to the passage of this act. *Act of March 2, 1895 (28 Stat. L., 704).*

Fee for increase, etc., claims. Penalty for taking illegal fee. Pending contracts. Mar. 3, 1891, v. 26, p. 1082.

2188. Hereafter no agent or attorney shall demand, receive, or be allowed any compensation under existing law exceeding two dollars in any claim for increase of pension on account of the increase of the disability for which the pension has been allowed, or for services rendered in securing the passage of any special act of Congress granting a pension or an increase of pension in any case that has been presented at the Pension Office or is allowable under the general pension laws: *And provided further*, That any agent, attorney, or other person instrumental in prosecuting any claim for increase of pension on account of the increase of disability for which pension was allowed, or who has rendered services in procuring the passage of any special act of Congress granting a pension or an increase of pension in any case that has been presented at the Pension Office or is allowable under the general pension laws, who shall directly or indirectly contract for, demand, receive, or retain any compensation for such services, except as hereinbefore provided, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall, for each and every such offense, be fined not exceeding five hundred dollars or imprisoned, not exceeding two years or both, in the discretion of the court: *Provided, however*, That the foregoing provisions in relation to fees of agents or attorneys shall not apply to any case now pending where there is an existing lawful contract express or implied. *Act of March 3, 1891 (26 Stat L., 1082).*

DECLARATIONS AND EVIDENCE IN PENSION CASES.

Par.
2189. Declarations, oaths, etc.
2190, 2191. The same, oaths.
2192. Declarations in foreign countries.
2193. Blank forms and instructions to be furnished.
2194. Curing defective declarations.
2195. Proof of death.
Par.
2196. Presumptions as to nondisability at enlistment.
2197. Same as to absentees.
2198. Period of service, how reckoned.
2199. Proof of marriage.
2200. Legitimacy of children.
2201. Certain soldiers not to be deemed deserters.

Declarations in pension cases, Sec. 1, July 26. 1892, v. 27, p. 272.

2189. Declarations[1] of pension claimants shall be made before a court of record, or before some officer thereof having custody of its seal, or before some officer who, under the laws of his State, city, or county, has authority to administer oaths for general purposes; and said officers are hereby fully authorized and empowered to administer and certify any oath or affirmation relating to any pension or application therefor: *Provided*, That where such declaration or other papers are executed before an officer authorized as above but not required by the laws of his State to have and use a seal to authenticate his official acts, he shall file in the Pension Bureau a certificate of his official character, showing his official signature and term of office, certified by a clerk of a court of record or other proper officer of the State as to the genuineness thereof; and when said certificate has been filed in the Bureau of Pensions his own certificate will be recognized during his term of office.[1] *Sec. 1, act of July 26, 1892 (27 Stat. L., 272).*

Oaths in pension, etc., cases.

May be taken before authorized officer.

Certification, etc., by county clerk, etc. July 1, 1890, v. 26, p. 209.

2190. Any and all affidavits and declarations to be hereafter made or used in any pension or bounty cases, or in claims against the Government for back pay or arrears or increase of pension, or for quarterly vouchers, may be taken by any officer authorized to administer oaths for general purposes in the State, city, or county where said officer resides. If such officer has a seal and uses it upon such paper, no certificate of a county clerk or prothonotary or clerk of a court shall be necessary; but when no seal is used by the officer taking such affidavit, then a clerk of a court of record or a county or city clerk shall affix his official seal thereto and shall certify to the signature and official character of said officer.[2] *Act of July 1, 1890 (26 Stat. L., 209).*

Oaths in pension cases.

Certificate of official character, etc. J. R. 43, Sept. 1, 1890, v. 26, p. 679.

2191. The act approved July first, eighteen hundred and ninety, entitled "An act in relation to oaths in pension and other cases," be, and the same is hereby, amended and construed to mean that when declarations, affidavits, and other papers are verified by justices of the peace and other officers duly authorized by law to administer oaths for general persons, but not required by law to have seals, the official character, signature, and term of service of such justice or other officer shall be certified by the clerk of the county or court of record or other proper officer, under the seal of such county or court or public officer, in the department or bureau in which such papers are to be used; and one such certificate duly filed in such department or bureau, or with any pension agent, shall be sufficient as to all verifications of such officer during his official term, and all papers heretobefore or hereafter filed shall be subject.[1] *Joint resolution No. 43, September 1, 1890 (26 Stat. L., 679).*

---

[1] The act of June 13, 1898 (30 Stat L., 448, 462), contains a provision exempting "papers necessary to be used for the collection of claims from the United States for pensions, back pay, bounty, or for property lost in the military or naval service" from the operation of the statute requiring powers of attorney to be stamped in accordance with the requirements of that enactment.

[2] Replaced in part by the act of July 26, 1892 (27 Stat. L., 272), paragraph 2189, *ante.*

One sufficient.

2192. The Commissioner of Pensions may accept declarations and other papers of claimants residing in foreign countries made before a United States minister or consul or other consular officer, or before some officer of the country duly authorized to administer oaths for general purposes, and whose official character and signature shall be duly authenticated by the certificate of a United States minister or consul, or other consular officer; and declarations in claims of Indians may be made before a United States Indian agent. *Sec: 2, act of July 26, 1892 (27 Stat. L., 272).*

Declarations made in foreign countries.
Sec. 2, July 26, 1892, v. 27, p. 272.

Declarations of Indians.

2193. The Commissioner of Pensions, on application being made to him in person, or by letter, by any claimant or applicant for pension, bounty-land, or other allowance required by law to be adjusted or paid by the Pension Office, shall furnish such person, free of all expense, all such printed instructions and forms as may be necessary in establishing and obtaining said claim; and on the issuing of a certificate of pension or of a bounty-land warrant, he shall forthwith notify the claimant or applicant, and also the agent or attorney in the case, if there be one, that such certificate has been issued, or allowance made, and the date and amount thereof.[2]

Commissioner to furnish printed instructions free of charge.
Ibid., s. 22, p. 573.
Sec. 4748, R.S.

2194. Any and all declarations and affidavits now on file in the Pension Bureau which are considered informal by reason of not having been executed in conformity to the laws heretofore in force covering such, and in which it is shown or may be hereafter shown by proper evidence that the same were executed by and before an officer who was duly authorized to administer oaths for general purposes at said date of execution, shall be accepted as formal as from date of filing such declarations or affidavits. *Sec. 3, act of July 26, 1892 (27 Stat. L., 272).*

Curing defective declarations, etc.
Sec. 3, July 26, 1892, v. 27, p. 272.

---

[1] Replaced in part by the act of July 26, 1892 (27 Stat. L., 272), paragraph 2189, *ante.*

[2] Section 4717 of the Revised Statutes, which established a period of limitation in the prosecution of claims for pension, was expressly repealed by the act of January 25, 1889 (20 Stat. L., 265), paragraph 2202, *post.* There is now no limitation, in point of time, in the prosecution of pension claims.

Proof of death. Mar. 13, 1896, v. 29, p. 57.

2195. In considering claims filed under the pension laws, the death of an enlisted man or officer shall be considered as sufficiently proved if satisfactory evidence is produced establishing the fact of the continued and unexplained absence of such enlisted man or officer from his home and family for a period of seven years, during which period no intelligence of his existence shall have been received. And any pension granted under this act shall cease upon proof that such officer or enlisted man is still living. *Act of March 13, 1896 (29 Stat. L., 57).*

Presumption as to disability at enlistment. Mar. 3, 1885, v. 23, p. 361.

2196. All applicants for pensions shall be presumed to have had no disability at the time of enlistment; but such presumption may be rebutted. *Act of March 3, 1885 (23 Stat. L., 361).*

Absentees. Sec. 6, *ibid.* Sec. 4700, R.S.

2197. Officers absent on sick leave, and enlisted men absent on sick furlough, or on veteran furlough with the organization to which they belong, shall be regarded in the administration of the pension laws in the same manner as if they were in the field or hospital.

Period of service how construed. Sec. 7, *ibid.* Sec. 4701, R.S.

2198. The period of service of all persons entitled to the benefits of the pension laws, or on account of whose death any person may become entitled to a pension, shall be construed to extend to the time of disbanding the organization to which such persons belonged, or until their actual discharge for other cause than the expiration of the service of such organization.

Proof of marriage. Aug. 7, 1882, v. 22, p. 345.

2199. Marriages, except such as are mentioned in section forty-seven hundred and five of the Revised Statutes, shall be proven in pension cases to be legal marriages according to the law of the place where the parties resided at the time of marriage, or at the time when the right to pension accrued; and the open and notorious adulterous cohabitation of a widow who is a pensioner shall operate to terminate her pension from the commencement of such cohabitation. *Act of August 7, 1882 (22 Stat. L., 345).*

What children deemed legitimate. Sec. 4704, R. S.

2200. In the administration of the pension laws, children born before the marriage of their parents, if acknowledged by the father before or after the marriage, shall be deemed legitimate.

Certain soldiers and sailors not to be deemed deserters, etc. July 19, 1867, c. 28, v. 15, p. 14. Sec. 4749, R. S.

2201. No soldier or sailor shall be taken or held to be a deserter from the Army or Navy who faithfully served according to his enlistment until the nineteenth day of April, eighteen hundred and sixty-five, and who, without proper authority or leave first obtained, quit his command or refused to serve after that date; but nothing herein contained shall operate as a remission of any forfeiture incurred by any such soldier or sailor of his pension; but this section shall be construed solely as a removal of any disability such soldier or sailor may have incurred by the loss of his citizenship in consequence of his desertion.

REMOVAL OF LIMITATION.

Limitation to prosecution of pension claims removed.

S. 3, Jan. 25, 1879, v. 20, p. 265.

2202. That section forty-seven hundred and seventeen of the Revised Statutes of the United States, which provides that "no claim for pension not prosecuted to a successful issue within five years from the date of filing the same shall be admitted without record evidence from the War or Navy Department of the injury or the disease which resulted in the disability or death of the person on whose account the claim is made: *Provided*, That in any case in which the limitation prescribed by this section bars the further prosecution of the claim, the claimant may present, through the Pension Office, to the Adjutant-General of the Army or the Surgeon-General of the Navy, evidence that the disease or injury which resulted in the disability or death of the person on whose account the claim is made originated in the service and in the line of duty, and if such evidence is deemed satisfactory by the officer to whom it may be submitted, he shall cause a record of the fact so proved to be made, and a copy of the same to be transmitted to the Commissioner of Pensions, and the bar to the prosecution of the claim shall thereby be removed," be, and the same is hereby, repealed.[1] *Sec. 3, act of January 25, 1879 (20 Stat. L., 265).*

ATTORNEYS' FEES.[2]

Par.
2203. Fees for prosecution of claims.
2204. Agreement to be filed; form of agreement.
2205. Amount paid to be deducted from fee.
2206. Penalty for violation of statute respecting fees.
Par.
2207. Regulations to be prescribed.
2208. Rejection of contracts for fees.
2209. Repeal of prior statute respecting fees.
2210. Sections 4768, 4769, and 4786, Revised Statutes, made applicable.
2211. False affidavits; penalty.

Fees of attorney for prosecuting claims.

2203. No agent or attorney or other person shall demand or receive any other compensation for his services in pros-

---

[1] Section 4721, Revised Statutes, prescribes a limitation upon the operation of sections 4709 and 4710, and 4717, the former of which were repealed by the act of March 3, 1879 (20 Stat. L., 469), and the latter by section 3 of the act of January 25, 1879 (20 Stat. L., 265).

[2] For other statutory restrictions in respect to the allowance of attorneys' fees in pension cases, see section 4 of the act of July 4, 1884 (23 Stat. L., 99), par. 2184, *ante;* section 2, act of March 19, 1886 (24 ibid., 5), paragraph 2139, *ante;* section 4, act of June 27, 1890 (26 ibid., 182), paragraph 2153, *ante;* March 3, 1891 (26 ibid., 1082), paragraph 2188, *ante;* section 2, act of August 5, 1892 (27 ibid., 349), paragraph 2156, *ante.*

Sec. 3, July 4, 1884, v. 23, p. 99.
Sec. 4785, R.S.
Proviso.
Fees not paid in certain cases to be deducted from pension.

ecuting a claim for pension or bounty land than such as the Commissioner of Pensions shall direct to be paid to him, not exceeding twenty-five dollars; nor shall such agent, attorney, or other person demand or receive such compensation, in whole or in part, until such pension or bounty-land claim shall be allowed: *Provided*, That in all claims allowed since June twentieth, eighteen hundred and seventy-eight, where it shall appear to the satisfaction of the Commissioner of Pensions that the fee of ten dollars, or any part thereof, has not been paid, he shall cause the same to be deducted from the pension, and the pension agent to pay the same to the recognized attorney.

Agreement for amount of fee to be filed.
Sec. 4, July 4, 1884, v. 23, p. 99.
Sec. 4786, R.S.
Fees in case of failure to file agreement.
Articles of agreement, etc., recognized in certain claims only.
Proviso.
Fee for bounty land, etc.
No fee allowed for arrears of pension, etc.

2204. The agent or attorney of record in the prosecution of the case may cause to be filed with the Commissioner of Pensions, duplicate articles of agreement, without additional cost to the claimant, setting forth the fee agreed upon by the parties, which agreement shall be executed in the presence of and certified by some officer competent to administer oaths. In all cases where application is made for pension or bounty land, and no agreement is filed with the Commissioner as herein provided, the fee shall be ten dollars and no more. And such articles of agreement as may hereafter be filed with the Commissioner of Pensions are not authorized, nor will they be recognized except in claims for original pensions, claims for increase of pension on account of a new disability, in claims for restoration where a pensioner's name has been or may hereafter be dropped from the pension rolls on testimony taken by a special examiner, showing that the disability or cause of death, on account of which the pension was allowed, did not originate in the line of duty, and in cases of dependent relatives whose names have been or may hereafter be, dropped from the rolls on like testimony, upon the ground of nondependence, and in such other cases of difficulty and trouble as the Commissioner of Pensions may see fit to recognize them: *Provided*, That no greater fee than ten dollars shall be demanded, received, or allowed in any claim for pension or bounty land granted by special act of Congress, nor in any claim for increase of pension on account of the increase of the disability for which the pension had been allowed: *And provided further*, That no fee shall be demanded, received, or allowed in any claim for arrears of pension or arrears of increase of pension allowed by any act of Congress passed subsequent to the date of the allowance of the original claims in which such arrears of pension, or of increase of pension, may be allowed.[1] *Sec. 4, act of July 4, 1884 (23 Stat. L., 99).*

The articles of agreement herein provided for shall be in substance as follows, to wit:

ARTICLES OF AGREEMENT.

Form of articles of agreement.

Whereas I, ——— ———, late a ——— in company ———, of the ——— regiment of ——— volunteers, war of eighteen hundred and sixty-one (or, if the service be different, here state the same), having made application for pension under the laws of the United States:

Now, this agreement witnesseth, that for and in consideration of services done and to be done in the premises, I hereby agree to allow my attorney, ——— ———, of ———, the fee of ——— dollars, which shall include all amounts to be paid for any service in furtherance of said claim; and said fee shall not be demanded by or payable to my said attorney (or attorneys), in whole or in part, except in case of the granting of my pension by the Commissioner of Pensions; and then the same shall be paid to him (or them) in accordance with the provisions of sections forty-seven hundred and sixty-eight and forty-seven hundred and sixty-nine of the Revised Statutes.

(Claimant's signature.)

(Two witnesses' signatures.)

STATE OF ——— } *ss.*
County of ——— }

Be it known that on this, the ——— day of ———, anno Domini eighteen hundred and eighty ——, personally appeared the above-named ——— ———, who, after having had read over to ——, in the hearing and presence of the two attesting witnesses, the contents of the foregoing articles of agreement, voluntarily signed and acknowledged the same to be —— free act and deed.

(Official signature.)

And now, to wit, this ——— day of ———, anno Domini eighteen hundred and eighty ——, I (or we) accept the provisions contained in the foregoing articles of agreement, and will, to the best of my (or our) ability, endeavor faithfully to represent the interest of the claimant in the premises.

Witness my (or our) hand, the day and year first above written.

(Signature of attorney.)

---

[1] This section replaces section 4 of the act of January 25, 1879 (20 Stat. L., 265).

STATE OF ——— } ss.
County of ——— }

Personally came ——— ———, whom I know to be the person he represents himself to be, and who, having signed above acceptance of agreement, acknowledged the same to be —— free act and deed.

(Official signature.)

Amount paid etc., to be deducted from fee.

2205. And if in the adjudication of any claim for pension in which such articles of agreement have been, or may hereafter be, filed, it shall appear that the claimant had, prior to the execution thereof, paid to the attorney any sum for his services in such claim, and the amount so paid is not stipulated therein, then every such claim shall be adjudicated in the same manner as though no articles of agreement had been filed, deducting from the fee of ten dollars allowed by law such sum as claimant shall show that he has paid to his said attorney. *Ibid.*

Penalty for violation of act relating to fees or compensation.

2206. Any agent or attorney or other person instrumental in prosecuting any claim for pension or bounty land, who shall directly or indirectly contract for, demand or receive or retain any greater compensation for his services or instrumentality in prosecuting a claim for pension or bounty land than is herein provided, or for payment thereof at any other time or in any other manner than is herein provided, or who shall wrongfully withhold from a pensioner or claimant the whole or any part of the pension or claim allowed and due such pensioner or claimant, or the land warrant issued to any such claimant, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall for every such offense be fined not exceeding five hundred dollars, or imprisoned at hard labor not exceeding two years, or both, in the discretion of the court. *Ibid.*

Secretary of Interior to prescribe rules for government of agents, etc., in prosecution of claims.
Sec. 5, *ibid.*

2207. That the Secretary of the Interior may prescribe rules and regulations governing the recognition of agents, attorneys, or other persons representing claimants before his Department, and may require of such persons, agents, and attorneys, before being recognized as representatives of claimants, that they shall show that they are of good moral character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their claims and such Secretary may, after notice and opportunity for a hearing, suspend or exclude from further practice before his Department any such person, agent, or attorney shown to be incompetent, disreputable, or who refuses to comply with the said rules and regulations, or who shall with intent to defraud in any manner deceive, mislead, or threaten any claimant, or prospective claimant, by word, circular, letter, or by advertisement. *Sec. 5, ibid.*

Commissioner of Pensions may reject contracts for fees, etc.
Sec. 6, *ibid.*

2208. The Commissioner shall have power, subject to review by the Secretary, to reject or refuse to recognize any contract for fees herein provided for whenever it shall be made to appear that any undue advantage has been taken of the claimant in respect to such contract. *Sec. 6, ibid.*

Attorneys' fees in pension cases; act relating to, repealed.
July 4, 1884, v. 23, p. 99.

2209. That the act entitled "An act relating to claim agents and attorneys in pension cases," approved June twentieth, eighteen hundred and seventy-eight, is hereby repealed: *Provided, however*, That the rights of the parties shall not be abridged or affected as to contracts in pending cases, as provided for in said act; but such contracts shall be deemed to be and remain in full force and virtue, and shall be recognized as contemplated by said act. *Act of July 4, 1884 (23 Stat. L., 99).*

Sections 4768, 4769, and 4786, Revised Statutes, made applicable in certain cases.
Sec. 2, July 4, 1884, v. 23, p. 99.

2210. That sections forty-seven hundred and sixty-eight,[1] forty-seven hundred and sixty-nine,[2] and forty-seven hundred and eighty-six[3] of the Revised Statutes are hereby made applicable also to all cases hereafter filed with the Commissioner of Pensions, and to all cases so filed since June twentieth, eighteen hundred and seventy-eight, and which have not been heretofore allowed, except as hereinafter provided. *Sec. 2, act of July 4, 1884 (23 Stat. L., 99).*

Penalty for false affidavit and post-dating vouchers.
July 7, 1898, v. 30, p. 718.
Sec. 4746, R. S.

2211. Every person who knowingly or willfully makes or aids, or assists in the making, or in any wise procures the making or presentation of any false or fraudulent affidavit, declaration, certificate, voucher, or paper or writing purporting to be such, concerning any claim for pension or payment thereof, or pertaining to any other matter within the jurisdiction of the Commissioner of Pensions or of the Secretary of the Interior, or who knowingly or willfully makes or causes to be made, or aids or assists in the making, or presents or causes to be presented at any pension agency any power of attorney or other paper required as a voucher in drawing a pension, which paper

---

[1] Paragraph 2220, *post.*

[2] Paragraph 2221, *post.*

[3] See act of July 4, 1884 (23 Stat. L. 99), paragraphs 2209 *ante.*

Penalty for certificate to vouchers, etc.

bears a date subsequent to that upon which it was actually signed or acknowledged by the pensioner, and every person before whom any declaration, affidavit, voucher, or other paper or writing to be used in aid of the prosecution of any claim for pension or bounty land or payment thereof purports to have been executed who shall knowingly certify that the declarant, affiant, or witness named in such declaration, affidavit, voucher, or other paper or writing personally appeared before him and was sworn thereto, or acknowledged the execution thereof, when, in fact, such declarant, affiant, or witness did not personally appear before him or was not sworn thereto, or did not acknowledge the execution thereof, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment for a term of not more than five years. *Act of July 7, 1898 (30 Stat. L., 718).*

PAYMENT OF PENSIONS.

Par.
2212. Pension agents.
2213. The same; bonds.
2214. Agencies to be grouped; quarterly payments to be made.
2215. Blanks, vouchers.
2216. Vouchers sent to pensioners.
2217. Checks drawn to order of pensioners.
2218. Oaths administered free by certain officers of the United States.
2219. The same; fourth-class postmasters.
2220. Payment of pension certificates.
2221. Fees to be deducted.
2222. Mailing checks, presumptive evidence of payment.

Par.
2223. Death of pensioner without widow or child.
2224. Pensions under disabilities.
2225. Insane pensioners.
2226. Indian pensioners, may be paid in silver.
2227. Disloyalty a bar.
2228, 2229. The same; removal of disability.
2230. Desertion of wife.
2231. Pensions in foreign countries not payable to attorney.

Pension agents, appointment and term of office.
Apr. 5, 1869, c. 10, ss. 1, 2, v. 16, pp. 6, 7.
Sec. 4778, R. S.

2212. The President is authorized to appoint, by and with the advice and consent of the Senate, all pension agents, who shall hold their respective offices for the term of four years, unless sooner removed or suspended, as provided by law, and until their successors are appointed and qualified.

Bond of pension agents.
Feb. 5, 1867, c. 32, v. 14, p. 391.
Sec. 4779, R. S.

2213. All pension agents shall give bond, with good and sufficient sureties, for such amount and in such form as the Secretary of the Interior may approve.[1]

---

[1] The act of June 30, 1890 (26 Stat. L., 187), contained the requirement that "in case of the sickness or unavoidable absence of any pension agent from his office, he may, with the approval of the Secretary of the Interior, authorize the chief clerk, or some other clerk employed therein, to act in his place, to sign official checks, and to

Agencies to be arranged in three groups.
Sec. 2, Mar. 3, 1891, v. 26, p. 1082.
Quarterly payments to groups.

2214. The Secretary of the Interior is hereby authorized and directed to arrange the various agencies for the payment of pensions in three groups as he may think proper, and may from time to time change any agency from one group to another as he may deem convenient for the transaction of the public business. * * * The Secretary of the Interior is hereby fully authorized to cause payments of pensions to be made for the fractional parts of quarters created by such change, so as to properly adjust all payments as herein provided. Section forty-seven hundred and sixty-four of the Revised Statutes is hereby so amended as to conform to the changes in the time of payments provided herein, and is made applicable thereto. *Sec. 2, act of March 3, 1891 (25 Stat. L., 1082).*

Blanks for vouchers; notice.
Ibid., s. 5.
Sec. 4767, R. S.

2215. The Secretary of the Interior shall cause suitable blanks for the vouchers mentioned in section forty-seven hundred and sixty-four[2] to be printed and distributed to the agents for the payment of pensions, upon which he shall cause a note to be printed informing pensioners of the fact that hereafter no pension will be paid, except upon the vouchers issued as herein directed.

Pension agents to send quarterly voucher to each pensioner, etc.
July 8, 1870, c. 225, s. 1, v. 16, p. 193.
Sec. 4764, R. S.

2216. Within fifteen days immediately preceding the fourth day of March, June, September, and December in each year, the several agents for the payment of pensions shall prepare a quarterly voucher for every person whose pension is payable at his agency, and transmit the same by mail, directed to the address of the pensioner named in such voucher, who, on or after the fourth day of March, June, September, and December next succeeding the date of such voucher, may execute and return the same to the agency at which it was prepared, and at which the pension of such person is due and payable.

Check to be drawn to order of each pensioner.
Ibid., s. 2, p. 194.
Sec. 4765, R. S.

2217. Upon the receipt of such voucher, properly executed, and the identity of the pensioner being established and proved in the manner prescribed by the Secretary of the Interior, the agent for the payment of pensions shall immediately draw his check on the proper assistant treasurer or designated depositary of the United States for the

---

discharge all the other duties required by law of such pension agent; and, with like approval, any pension agent may designate and authorize a clerk to sign the name of the pension agent to official checks. The official bond given by the principal of the office shall be held to cover and apply to the acts of the person appointed to act in his place in such cases, and a new bond shall be required from all pension agents now in office. Such acting officer shall, moreover, for the time being, be subject to all the liabilities and penalties prescribed by law for the official misconduct, in like cases, of the pension agent for whom he acts."

[2] Paragraph 2216, *post.*

amount due such pensioner, payable to his order, and transmit the same by mail, directed to the address of the pensioner entitled thereto; but any pensioner may be required, if thought proper by the Commissioner of Pensions, to appear personally and receive his pension.

Oaths to be administered by officers free.
June 7, 1888, v. 25, p. 174; Mar. 1, 1889, v. 25, p. 782.

2218. Hereafter all United States officers now authorized to administer oaths are hereby required and directed to administer any and all oaths required to be made by pensioners and their witnesses, in the execution of their vouchers for their pensions free of charge.[1] *Act of June 7, 1888 (25 Stat. L., 174), and March 1, 1889 (25 Stat. L., 782).*

Fourth-class postmasters may administer oaths, etc.
Aug. 23, 1894, v. 28, p. 499.

2219. Hereafter, in addition to the officers now authorized to administer oaths in such cases, fourth-class postmasters of the United States are hereby required, empowered, and authorized to administer any and all oaths required to be made by pensioners and their witnesses in the execution of their vouchers with like effect and force as officers having a seal; and such postmaster shall affix the stamp of his office to his signature to such vouchers, and he is authorized to charge and receive for each voucher not exceeding twenty-five cents, to be paid by the pensioner. *Act of August 23, 1894 (28 Stat. L., 499).*

Fees.

Certificate of pension and fee of attorney.
Ibid., s. 9, p. 195.
Sec. 4768, R.S.

2220. The Commissioner of Pensions shall forward the certificate of pensions, granted in any case, to the agent for paying pensions where such certificate is made payable, and at the same time forward therewith one of the articles of agreement filed in the case and approved by the Commissioner, setting forth the fee agreed upon between the claimant and the attorney or agent, and where no agreement is on file, as hereinbefore provided, he shall direct that a fee of ten dollars only be paid the agent or attorney.

Pension agent to deduct attorney's fees.
Ibid., s. 10.
Sec. 4769, R.S.

2221. It shall be the duty of the agent paying such pension to deduct from the amount due the pensioner the amount of fee so agreed upon or directed by the Commissioner to be paid where no agreement is filed and approved, and to forward or cause to be forwarded to the agent or attorney of record named in such agreement, or, in case there is no agreement, to the agent prosecuting the case the amount of the proper fee, deducting therefrom the sum of thirty cents, in payment of his services in forwarding the same.

---

[1] Section 6 of the act of July 8, 1870 (16 Stat. L., 194; section 4784, Revised Statutes), was expressly repealed by the act of March 23, 1896 (29 Stat. L., 74), and oaths to pensioners in connection with their vouchers can no longer be administered by pension agents.

2222. Hereafter a check or checks drawn by a pension agent in payment of pension due, and mailed by him to the address of the pensioner, shall constitute payment within the meaning of section forty-seven hundred and sixty-five, Revised Statutes, in the event of the death of a pensioner subsequent to the mailing and before the receipt of said check; and the amount which may have accrued on the pension of any pensioner subsequent to the last quarterly payment on account thereof and prior to the death of such pensioner shall in the case of a husband be paid to his widow, or if there be no widow to his surviving minor children or the guardian thereof, and in the case of a widow to her minor children. *Act of June 30, 1890 (26 Stat. L., 187).*

Mailing check to be payment in certain cases.
June 30, 1890, v. 26, p. 187.

2223. Hereafter whenever a pension certificate shall have been issued and the pensioner mentioned therein dies before payment shall have been made, leaving no widow and no surviving minor children, the accrued pension due on said certificate to the date of the death of said pensioner may, in the discretion of the Secretary of the Interior, be paid to the legal representatives of said pensioner. *Act of June 30, 1890 (26 Stat. L., 187).*

Death of pensioner, leaving no widow nor minor child.
June 30, 1890, v. 26, p. 187.
Sec. 4765, R. S.

2224. Hereafter no pension shall be paid to any person other than the pensioner entitled thereto, nor otherwise than according to the provisions of this title;[1] and no warrant, power of attorney, or other paper executed or purporting to be executed by any pensioner to any attorney, claim agent, broker, or other person shall be recognized by any agent for the payment of pensions, nor shall any pension be paid thereon; but the payment to persons laboring under legal disabilities may be made to the guardians of such persons in the manner herein prescribed, and pensions payable to persons in foreign countries may be made according to the provisions of existing laws.[2] *Act of August 8, 1882 (22 Stat. L., 374).*

Pensioners under legal disabilities.
Aug. 8, 1882, v. 22, p. 374.
Sec. 4766, R. S.

Pensioners in foreign countries.

2225. In case of an insane invalid pensioner having no guardian, but having a wife or children dependent upon him (the wife being a woman of good character), the Commissioner of Pensions is hereby authorized, in his discretion, to cause the pension to be paid to the wife, upon her properly executed vouchers, or in case there is no wife, to

Invalid pensioners. insane.

---

[1] Title LVII, Revised Statutes.

[2] The act of March 1, 1893 (27 Stat. L., 523), contained the requirement that "from and after July 1, 1893, no pension shall be paid to a nonresident, who is not a citizen of the United States, except for actual disabilities incurred in the service." This statute was expressly repealed by the act of March 2, 1895 (28 Stat. L., 703).

the guardian of the children, upon the properly executed voucher of such guardian, and in like manner to cause the pension of invalid pensioners who are or may hereafter be imprisoned as punishment for offenses against the laws to be paid while so imprisoned to their wives or the guardians of their children. *Ibid.*

Indian pensioners; payments in standard silver.

2226. And pensions to Indian pensioners residing in the Indian Territory may be paid in person by the pension agent, upon a suitable voucher, at some convenient point in said Territory, which, together with the form and manner of identification of the pensioners, may be prescribed by the Secretary of the Interior; such payments to be made in standard silver, at least once in each current year. And payments in person shall be made to the pensioner, in cash, by the pension agent whenever in the discretion of the Commissioner of Pensions such personal payment shall be by him deemed necessary or proper to secure to the pensioner his rights; and the necessary and actual expenses of such pension agent in making such payments shall be paid by the Secretary of the Interior upon properly executed vouchers, out of the contingent fund appropriated for the use of the Pension Office. *Ibid.* * * *

Payments in cash, when made.

Expenses of agents.

Disloyalty a bar to pension.
Sec. 4716, R.S.

2227. No money on account of pension shall be paid to any person, or to the widow, children, or heirs of any deceased person, who in any manner voluntarily engaged in or aided or abetted the late rebellion against the authority of the United States.[1]

Disloyalty, as a bar, removed in certain cases.
Mar. 3, 1877;
Aug. 1, 1892, v. 27, p. 340.

2228. The law[2] prohibiting the payment of any money on account of pension to any person, or to the widow, children, or heirs of any deceased person, who in any manner engaged in or aided or abetted the late rebellion against the authority of the United States, shall not be construed to apply to such persons as afterwards voluntarily enlisted in either the Navy or Army of the United States, and who, while in such service, incurred disability from a wound or injury received or disease contracted in the line of duty.[3] *Act of August 1, 1892 (27 Stat. L., 340).*

---

[1] In addition to the cases referred to in pars. 2228 and 2229, the requirements of section 4716 of the Revised Statutes have been repealed in part by the following enactments: Section 5, act of January 29, 1887 (24 Stat. L., 371), paragraphs 2159 to 2164, *ante;* section 6, act of July 27, 1892 (27 ibid., 281), paragraphs 2173 to 2167, *ante.*

[2] Section 4716, Revised Statutes, paragraph 2227, *ante.*

[3] The act of August 1, 1892 (27 Stat. L., 340), replaces the act of March 3, 1877 (19 ibid., 403), which modified section 4716, Revised Statutes, in its application to the widows, children, and heirs of those persons who had joined in the rebellion of 1861–1865 against the United States, but who had subsequently enlisted in the Army of the United States.

2229. That section forty-seven hundred and sixteen of the Revised Statutes be, and the same is hereby, repealed, so far as the same may be applicable to the claims to pension of dependent parents of soldiers, sailors, and marines who served in the Army or Navy of the United States during the war with Spain. *Act of April 18, 1900 (31 Stat. L., 136).*

The same. Apr. 18, 1900, v. 31, p. 136.

2230. In case a resident pensioner of the United States shall for a period of over six months desert his lawful wife, she being a woman of good moral character and in necessitous circumstances, or, if he have no lawful wife, shall desert his legitimate minor child or children under sixteen years of age, or his permanently helpless and dependent child, the Commissioner of Pensions is hereby directed, upon being satisfied by competent evidence of such desertion, to cause one-half of the pension due or to become due said pensioner during the continuance of such desertion to be paid to the wife, or in case there is no wife, to the legal guardian of the child or children: *Provided further*, That when a soldier or sailor enters into a State home for soldiers or sailors as an inmate thereof, one-half of his pension accruing during his residence therein shall be paid to his wife, she being a woman of good moral character and in necessitous circumstances, or if there be no wife, then to his child or children under sixteen years of age, or his permanently helpless and dependent child, if any, unless such wife and children shall also be inmates of the same institution or of some home provided for the wives and children of soldiers and sailors: *Provided further*, That if any such pensioner is or shall become an inmate of a National Soldiers' Home one-half of the pension drawn in his behalf or to which he may become entitled during his residence therein shall be paid by the treasurer of that institution to such pensioner's wife, she being in necessitous circumstances and a woman of good moral character, or, if there be no wife, to the legal guardian of the minor child or children, or the permanently dependent and helpless child or children of such pensioner, on the order of the Commissioner of Pensions.[1] *Act of March 3, 1899 (30 Stat. L., 1379).*

The same; provisos. Mar. 3, 1899, v. 30, p. 1379. Sec. 4766, R.S.

* * * * *

---

[1] For the proviso of this statute restricting the issue of pensions to widows, see par. 2224, *ante.*

For payment of pensions to inmates of the Soldiers' Home, of the National Home for Disabled Volunteer Soldiers, and the Government Hospital for the Insane, see the chapters so entitled.

Payments by attorney to foreign pensioners prohibited.
Mar. 14, 1898, v. 30, p. 276.

2231. Hereafter no pensions shall be paid upon power of attorney from pensioners residing in foreign countries.[1] *Act of March 14, 1898 (30 Stat. L., 276).*

ACCRUED AND UNCLAIMED PENSIONS.

Par.
2232. Accrued pensions.
2233. Payment of accrued pensions at death of pensioner.
Par.
2234. Unclaimed pensions.

Accrued pensions.
Sec. 25, Mar. 3, 1873, v. 17, p. 574.
Sec. 4718, R. S.

2232. If any pensioner has died or shall hereafter die; or if any person entitled to a pension, having an application therefor pending, has died or shall hereafter die, his widow, or if there is no widow, the child or children of such person, under the age of sixteen years, shall be entitled to receive the accrued pension to the date of the death of such person. Such accrued pension shall not be considered as a part of the assets of the estate of deceased, nor liable to be applied to the payment of the debts of said estate in any case whatever, but shall inure to the sole and exclusive benefit of the widow or children; and if no widow or child survive, no payment whatsoever of the accrued pension shall be made or allowed, except so much as may be necessary to reimburse the person who bore the expenses of the last sickness and burial of the decedent, in cases where he did not leave sufficient assets to meet such expenses.[2]

Payment of accrued pension to death of pensioner.

Distribution.
Mar. 2, 1895, v. 28, p. 964.

2233. From and after the twenty-eighth day of September, eighteen hundred and ninety-two, the accrued pension to the date of the death of any pensioner, or of any person entitled to a pension having an application therefor pending, and whether a certificate therefor shall issue prior or subsequent to the death of such person, shall, in the case of a person pensioned, or applying for pension, on account of his disabilities or service, be paid, first, to his widow; second, if there is no widow, to his child or children under the age of sixteen years at his death; third, in case of a widow, to her minor children under the age of sixteen years at her death. Such accrued pension shall not be considered a part of the assets of the estate of such deceased person, nor be liable for the payment of the debts of said estate in any case whatsoever, but shall inure to the sole and exclusive benefit of the widow or children. And if no widow or child survive such pensioner, and in the case of his last surviving child who was such minor at his death, and in case of a dependent mother, father, sister, or brother, no payment whatsoever of their accrued pension shall be made or allowed except so much as may be necessary to reimburse the person who bore the expense of their last sickness and burial, if they did not leave sufficient assets to meet such expense. And the mailing of a pension check, drawn by a pension agent in payment of a pension due, to the address of a pensioner, shall constitute payment in the event of the death of a pensioner subsequent to the execution of the voucher therefor. And all prior laws relating to the payment of accrued pension are hereby repealed. *Act of March 2, 1895* (*28 Stat. L.*, *964*).

---

[1] This enactment repeals the provision of section 4766, Revised Statutes, as amended by the act of August 8, 1882 (22 Stat. L., 374), that "pensions payable to persons in foreign countries may be made according to the provisions of existing laws" (paragraph 2224, *ante*), and brings such payments within the requirements of sections 4764, 4765, and 4766 of the Revised Statutes, paragraphs 2216, 2217 and 2224, *ante*.

[2] The act of June 3, 1884 (23 Stat. L., 35), contains the requirement "that the heirs or legal representatives of any officer whose muster into the service has been or shall be amended thereby shall be entitled to receive the arrears of pay due such officer, and the pension, if any, authorized by law, for the grade into which such officer is mustered under its provisions." See also the act of March 1, 1889 (25 Stat. L., 782).

Not assets of estate.

Payment of expenses of last sickness, etc.

Mailing check to be payment.

2234. The failure of any pensioner to claim his or her pension for three years after the same shall have become due shall be deemed presumptive evidence that such pension has legally terminated by reason of the pensioner's death, remarriage, recovery from the disability, or otherwise, and the pensioner's name shall be stricken from the list of pensioners, subject to the right of restoration to the same on a new application by the pensioner, or, if the pensioner is dead, by the widow or minor children entitled to receive the accrued pension, accompanied by evidence satisfactorily accounting for the failure to claim such pension, and by medical evidence in cases of invalids who were not exempt from biennial examinations as to the continuance of the disability.

Unclaimed pensions.
Sec. 26, June 18, 1874, v. 17, p. 574.
Sec. 4719, R.S.

ASSIGNMENTS, ETC.

2235. Any pledge, mortgage, sale, assignment, or transfer of any right, claim, or interest in any pension which has been, or may hereafter be, granted, shall be void and of no effect, and any person who shall pledge, or receive as a pledge, mortgage, sale, assignment or transfer of any right, claim, or interest in any pension, or pension certificate, which has been, or may hereafter be granted or issued, or who shall hold the same as collateral security for any debt, or promise, or upon any pretext of such security, or

Any pledge or transfer of pension void.
Sec. 2, Feb. 28, 1883, v. 22, p. 432.

Penalties.
Sec. 4745, R. S.

promise, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding one hundred dollars and the costs of the prosecution; and any person who shall retain the certificate of a pensioner and refuse to surrender the same upon the demand of the Commissioner of Pensions, or a United States pension agent, or any other person, authorized by the Commissioner of Pensions, or the pensioner, to receive the same shall, be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding one hundred dollars and the costs of the prosecution. *Sec. 2, act of February 28, 1883 (22 Stat. L., 432).*

Pension not liable to attachment, etc.
Ibid.
Sec. 4747, R. S.

2236. No sum of money due, or to become due, to any pensioner, shall be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, whether the same remains with the Pension Office, or any officer or agent thereof, or is in course of transmission to the pensioner entitled thereto, but shall inure wholly to the benefit of such pensioner.

MEDICAL EXAMINING BOARDS.

Par.
2237. Appointment; duties.
2238. Reports.
2239. Fees.
2240. Examinations
2241. Report accessible to claimant.
2242. Medical referee, etc.
2243. Civil examining surgeons.

Par.
2244. Expert examinations.
2245. Nonresident claimants.
2246. Special examinations.
2247. Inspection of agencies by Commissioner of Pensions, etc.
2248. Suspension of pensions.

Commissioner authorized to appoint surgeons, etc.

Boards of surgeons.

Special board of surgeons.

Provisos.

Sec. 4, July 25, 1882, v. 22, p. 175.

2237. The Commissioner of Pensions is hereby authorized to appoint surgeons who, under his control and direction shall make such examination of pensioners and claimants for pension or increased pension as he shall require; and he shall organize boards of surgeons, to consist of three members each, at such points in each State as he shall deem necessary, and all examinations, so far as practicable, shall be made by the boards, and no examination shall be made by one surgeon excepting under such circumstances as make it impracticable for a claimant to present himself before a board: *Provided*, That the Commissioner may, when in his opinion the exigencies of the service require it, organize a board of three surgeons who, under his direction, shall review the work of any regularly appointed board or surgeon: *Provided further*, That all examinations shall be thorough and searching, and the certificate contain a full description of the physical condition of the claimant at the time, which shall include all the physical and rational signs and a statement of all structural changes. *Sec. 4, act of July 25, 1882 (22 Stat. L., 175).*

Reports. Dec. 22, 1896, v. 29, p. 479.

2238. The report of such examining surgeons shall specifically state the rating which, in their judgment, the applicant is entitled to. *Act of December 22, 1896 (29 Stat. L., 479).*

Fee for examination, etc.

2239. The fee for each examination, and satisfactory certificate thereof, shall be two dollars to each member when made by a board, and two dollars when made by one surgeon: *Provided*, That when a claimant is so disabled as not to be able to present himself to a board of surgeons for examination, the Commissioner may order a surgeon to make the examination at the claimant's residence; and the fee for such examination shall be two dollars, in addition to the payment of the actual traveling expenses of the surgeon: *Provided further*, That no fee shall be allowed or paid to any member of such board of examining surgeons who does not actually participate in such examination and sign the certificate thereof.[1] *Sec. 4, act of July 25, 1882 (22 Stat. L., 175).*

Proviso.

Proviso.

Examinations. Apr. 4, 1900, v. 31, p. 61.

2240. Each member of each examining board shall, as now authorized by law, receive the sum of two dollars for the examination of each applicant whenever five or a less number shall be examined on any one day, and one dollar for the examination of each additional applicant on such day: *Provided*, That if twenty or more applicants appear on one day, no fewer than twenty shall, if practicable, be examined on said day, and that if fewer examinations be then made, twenty or more having appeared, then there shall be paid for the first examinations made on the next examination day the fee of one dollar only until twenty examinations shall have been made: *Provided further*, That no fees shall be paid to any member of an examining board unless personally present and assisting in the examination of applicant.[2] *Act of April 4, 1900 (31 Stat. L., 61).*

No fee unless service rendered.

---

[1] This section replaces, in part, section 4775, Revised Statutes, which authorized the appointment of boards of examining surgeons and prescribed their fees.

[2] A similar provision will be found in the acts of July 2, 1886 (24 Stat. L., 122); March 1, 1887 (24 Stat. L., 440); June 7, 1888 (25 Stat. L., 174); March 1, 1889 (25 Stat. L., 782); June 30, 1890 (26 Stat. L., 188); March 3, 1891 (26 Stat. L., 1082); July 13, 1892 (27 Stat. L., 119); March 1, 1893 (27 Stat. L., 524); July 18, 1894 (28 Stat. L., 113); March 2, 1895 (28 Stat. L., 403); March 6, 1896 (29 Stat. L., 45); Dec. 22, 1896 (ibid., 479); March 1, 1898 (30 Stat. L., 276); and February 4, 1899 (ibid., 820).

Claimant may inspect report.
July 18, 1894, v. 28, p. 113.

2241. The report of such examining surgeons when filed in the Pension Office shall be open to the examination and inspection of the claimant or his attorney, under such reasonable rules and regulations as the Secretary of the Interior may provide. *Act of July 18, 1894* (*28 Stat. L.*, *113*).

Medical referee and examining surgeon.
Ibid., s. 38, p. 577.
Sec. 4776, R.S.

2242. The Secretary of the Interior is authorized to appoint a duly qualified surgeon as medical referee who, under the control and direction of the Commissioner of Pensions, shall have charge of the examination and revision of the reports of examining surgeons, and such other duties touching medical and surgical questions in the Pension Office as the interests of the service may demand; and his salary shall be two thousand five hundred dollars per annum. And the Secretary of the Interior is further authorized to appoint such qualified surgeons (not exceeding four) as the exigencies of the service may require, who may perform the duties of examining surgeons when so required, and who shall be borne upon the rolls as clerks of the fourth class; but such appointments shall not increase the clerical force of said Bureau.

Appointment of civil examining surgeons.
Ibid., s. 35, p. 576.
Sec. 4777, R.S.

2243. The Commissioner of Pensions is empowered to appoint, at his discretion, civil surgeons to make the periodical examinations of pensioners which are or may be required by law, and to examine applicants for pension, where he deems an examination by a surgeon appointed by him necessary; and the fee for such examinations, and the requisite certificates thereof in duplicate, including postage on such as are transmitted to pension agents, shall be two dollars, which shall be paid by the agent for paying pensions in the district within which the pensioner or claimant resides, out of any money appropriated for the payment of pensions, under such regulations as the Commissioner of Pensions may prescribe.

Expert surgeons to make examinations.
July 25, 1882, v. 22, p. 176.

2244. The Commissioner may, when in his judgment the degree of disability can not be determined truthfully or satisfactorily excepting by expert examination, employ an expert, not a regularly appointed surgeon, to make the examination; and the fee for such examination shall be five dollars:

Proviso.
Fees.

Provided, That the fee for an expert examination shall not be paid to any regularly appointed examining surgeon. *Act of July 25, 1892* (*22 Stat. L.*, *176*).

Nonresident claimants.
July 25, 1882, v. 22, p. 176.

2245. The fee for the examination of claimants who reside out of the United States shall not exceed ten dollars, which shall be paid, upon the presentation of satisfactory vouchers, out of the appropriation for the payment of the examining surgeons, and through the United States consulate nearest to the claimant's place of residence. *Act of July 25, 1882 (22 Stat. L., 176).*

Commissioner of Pensions may order special examinations.
Sec. 3. June 21, 1879, v. 21, p. 30.

2246. The Commissioner of Pensions shall have the same power as heretofore to order special examinations whenever, in his judgment, the same may be necessary, and to increase or reduce the pension according to right and justice; but in no case shall a pension be withdrawn or reduced except upon notice to the pensioner and a hearing upon sworn testimony, except as to the certificate of the examining surgeon.[1] *Sec. 3, act of June 21, 1879 (21 Stat. L., 30).*

Inspection of agencies.
Aug. 8, 1882, v. 22, p. 373.

2247. The Commissioner of Pensions may, when in his judgment it shall be deemed necessary or proper, visit in person, for the purpose of examination and inspection, or may send any one or more of the officers of his bureau for that purpose, any one of the pension agencies or medical examining boards or surgeons; and the necessary and actual expenses of such visits shall be paid by the Secretary of the Interior, upon properly executed vouchers, out of the contingent fund of said bureau. *Act of August 8, 1882 (22 Stat. L., 373).*

SUSPENSION OF PENSIONS—PENSION A VESTED RIGHT.

Suspension of pension, notice, etc., to pensioner.
Act of Dec. 21, 1893, v. 28, p. 18.

Pensions to be deemed vested rights.

2248. Any pension heretofore or that may hereafter be granted to any applicant therefor under any law of the United States authorizing the granting and payment of pensions, on application made and adjudicated upon, shall be deemed and held by all officers of the United States to be a vested right in the grantee to that extent that payment thereof shall not be withheld or suspended until, after due notice to the grantee of not less than thirty days, the Commissioner of Pensions, after hearing all the evidence, shall decide to annul, vacate, modify, or set aside the decision upon which such pension was granted. Such notice to grantee must contain a full and true statement of any charges or allegations upon which such decision granting such pension shall be sought to be in any manner disturbed or modified. *Act of December 21, 1893 (28 Stat. L., 18).*

---

[1] Sections 4771, 4772, and 4773, Revised Statutes, were repealed by the act of June 21, 1879 (21 Stat. L., 30).

INVESTIGATIONS.

Par.
2249. Special investigations; oaths.
2250. The same; stenographers.
Par.
2251. Administration of oaths.
2252. Subpœnas to witnesses; fees.

Investigation of attempts at fraud.
Mar. 3, 1873, c. 234, s. 30, v. 17, p. 575.
Sec. 474, R. S.

2249. The Commissioner of Pensions is authorized to detail, from time to time, any of the clerks in his office to investigate any suspected attempts to defraud the United States, in or affecting the administration of any law relative to pensions, and to aid in prosecuting any person implicated, with such additional compensation as is customary in cases of special service. Any person so detailed shall have the power to administer oaths in the course of any such investigation.

Special service in investigating suspected attempts at fraud.
Mar. 3, 1873, c. 234, s. 30, v. 17, p. 575. Sec. 2, July 25, 1882, v. 22, p. 175.
Sec. 4744, R.S.

2250. The Commissioner of Pensions is authorized to detail, from time to time, clerks or persons employed in his office to make special examinations into the merits of such pension or bounty land claims, whether pending or adjudicated, as he may deem proper, and to aid in the prosecution of any party appearing on such examinations to be guilty of fraud, either in the presentation or in procuring the allowance of such claims; and any person so detailed shall have power to administer oaths and take affidavits and depositions in the course of such examinations, and to orally examine witnesses, and may employ a stenographer, when deemed necessary by the Commissioner of Pensions, in important cases, such stenographer to be paid by such clerk or person, and the amount so paid to be allowed in his accounts. *Sec. 2, act of July 25, 1882 (22 Stat. L., 175).*

Investigating officers may administer oaths, etc.
Sec. 3, Mar. 3, 1891, v. 26, p. 1083.

2251. The same power to administer oaths and take affidavits, which by virtue of section forty-seven hundred and forty-four of the Revised Statutes is conferred upon clerks detailed by the Commissioner of Pensions from his office to investigate suspected attempts at fraud on the Government through and by virtue of the pension laws, and to aid in prosecuting any person so offending, shall be, and is hereby, extended to all special examiners or additional special examiners employed under authority of Congress to aid in the same purpose. *Sec. 3, act of March 3, 1891 (26 Stat. L., 1083).*

Subpœnas to witnesses.
Sec. 3, July 25, 1882, v. 22, p. 175.

2252. In addition to the authority conferred by section one hundred and eighty-four, title four of the Revised Statutes, any judge or clerk of any court of the United States in any State, District, or Territory shall have power, upon the application of the Commissioner of Pensions, to issue a subpœna for a witness, being within the jurisdiction of such court, to appear, at a time and place in the subpœna stated, before any officer authorized to take depositions to be used in the courts of the United States, or before any officer, clerk, or person from the Pension Bureau designated or detailed to investigate or examine into the merits of any pension claim and authorized by law to administer oaths and take affidavits in such investigation or examination, there to give full and true answers to such written interrogatories and cross interrogatories as may be propounded, or to be orally examined and cross-examined upon the subject of such claim; and witnesses subpœnaed pursuant to this and the preceding section shall be allowed the same compensation as is allowed witnesses in the courts of the United States, and paid in the same manner. *Sec. 3, act of July 25, 1882 (22 Stat. L., 175).*

Witnesses' fees.

CRIMINAL OFFENSES.

Par.	Par.
2253. Senators, Representatives, etc., taking compensation, etc.	2254. False affidavits.
	2255–2256. Embezzlement.

2253. No Senator, Representative, or Delegate, after his election and during his continuance in office, and no head of a Department, or other officer or clerk in the employ of the Government, shall receive or agree to receive any compensation whatever, directly or indirectly, for any services rendered, or to be rendered, to any person, either by himself or another, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter or thing in which the United States is a party, or directly or indirectly interested, before any Department, court-martial, Bureau, officer, or any civil, military, or naval commission whatever. Every person offending against this section shall be deemed guilty of a misdemeanor, and shall be imprisoned not more than two years, and fined not more than ten thousand dollars, and shall, moreover, by conviction therefor, be rendered forever thereafter incapable of holding any office of honor, trust, or profit under the Government of the United States.

Upon taking compensation in matters to which United States is a party.
June 11, 1864, c. 119, v. 13, p. 123.
Sec. 1782, R.S.

---

[1] For other statutes creating criminal offenses in connection with the operation of the pension laws, see section 4, act of July 4, 1884 (23 Stat. L., 99), par. 2206, *ante;* section 2, act of August 5, 1892 (27 Stat. L., 349), par. 2156, *ante;* section 3, act of Jan. 29, 1887 (24 ibid., 371), par. 2161, *ante;* section 3, act of June 27, 1890 (26 ibid., 183), par. 2153, *ante,* and the act of July 7, 1898 (30 ibid., 718), par. 2211, *ante.*

Penalty for false affidavit and postdating vouchers, etc. July 7, 1898, v. 30, p. 720. Sec. 4746, R.S.

2254. Every person who knowingly or willfully makes or aids or assists in the making or in anywise procures the making or presentation of any false or fraudulent affidavit, declaration, certificate, voucher, or paper or writing purporting to be such concerning any claim for pension, or payment thereof, or pertaining to any other matter within the jurisdiction of the Commissioner of Pensions, or the Secretary of the Interior, or who knowingly or willfully makes or causes to be made, or aids or assists in the making, or presents or causes to be presented at any pension agency any power of attorney or other paper required as a voucher in drawing a pension, which paper bears a date subsequent to that upon which it was actually signed or acknowledged by the pensioner, and every person before whom any declaration, affidavit, voucher, or other paper or writing to be used in aid of the prosecution of any claim for pension or bounty land or payment thereof purports to have been executed who shall knowingly certify that the declarant, affiant, or witness named in such declaration, affidavit, voucher, or other paper or writing personally appeared before him and was sworn thereto, or acknowledged the execution thereof, when, in fact, such declarant, affiant, or witness did not personally appear before him or was not sworn thereto, or did not acknowledge the execution thereof, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment for a term of not more than five years.

Embezzlement of pension by guardian. Sec. 5486, R.S.

2255. If any guardian having the charge and custody of the pension of his ward shall embezzle the same in violation of his trust, or fraudulently convert the same to his own use, he shall be punished by fine not exceeding two thousand dollars, or imprisonment at hard labor for a term not exceeding five years, or both, at the discretion of the court.

The same. Feb. 10, 1891, v. 26, p. 746.

Penalty. Sec. 4783, R.S.

2256. Every guardian, conservator, curator, committee, tutor, or other person having charge and custody in a fiduciary capacity of the pension of his ward, who shall embezzle the same in violation of his trust, or fraudulently convert the same to his own use, shall be punished by fine not exceeding two thousand dollars or imprisonment at hard labor for a term not exceeding five years, or both, at the discretion of the court. *Act of February 10, 1891* (*26 Stat. L.*, *746*).

MISCELLANEOUS PROVISIONS.

Par.
2257. But one pension to be drawn at one time.
2258. Continuance of pension.
2259. Pensions not to be withheld.
2260. Pensions of officers in arrears not to be withheld.
2261. Military pay and pension prohibited.
2262. Pensions of civilian employees.

2257. Nothing in this Title[1] shall be so construed as to allow more than one pension at the same time to the same person, or to persons entitled jointly; but any pensioner who shall so elect may surrender his certificate, and receive, in lieu thereof, a certificate for any other pension to which he would have been entitled had not the surrendered certificate been issued. But all payments previously made for any period covered by the new certificate shall be deducted from the amount allowed by such certificate.[2]

Only one pension at a time
Sec. 20, *ibid.*
Sec. 4715, R.S.

2258. All pensioners whose names are now on the pension roll or who are entitled to restoration to the roll under any act of Congress, shall be entitled to the continuance of such pensions under the provisions and limitations of this Title, and to such further increase of pension as is herein provided.

Continuance of pensions.
Sec. 4733, R.S.

2259. The provisions of law which allow the withholding of the compensation of any person who is in arrears shall not be construed to authorize the pension of any pensioner of the United States to be withheld.

Pensions not to be withheld.
May 20, 1836, c. 77, v. 5, p. 31.
Sec. 4734, R.S.

2260. Hereafter no pension shall be allowed or paid to any officer, noncommissioned officer, or private in the Army, Navy, or Marine Corps of the United States, either on the active or retired list.[3] *Act of March 3, 1891 (26 Stat. L., 1082).*

Pensions not allowed to persons in Army or naval service.
Mar. 3, 1891, v. 26, p. 1082.

2261. No person in the Army, Navy, or Marine Corps shall draw both a pension as an invalid, and the pay of his rank or station in the service, unless the disability for which the pension was granted be such as to occasion his employment in a lower grade, or in the civil branch of the service.

Both pension and pay not allowed unless, etc.
Apr. 30, 1844, c. 15, v. 5, p. 657; Aug. 16, 1841, c. 3, s. 2, v. 5, p. 440.
Sec. 4724, R.S.

---

[1] Title LVII, Revised Statutes. By the terms of section 4722 of the Revised Statutes the provisions of this Title are made applicable to the officers and privates of the Missouri State militia and the Missouri provisional militia in certain cases.

[2] The act of March 1, 1893 (27 Stat. L., 524), contains the requirement that no pension shall be paid to a nonresident who is not a citizen of the United States, except for actual disabilities incurred in the service. This statute was repealed by the act of March 2, 1895 (28 Stat. L., 703).

[3] Section 2 of the act of August 29, 1890 (26 Stat. L., 371), contained the requirement that "Hereafter no officer of the Army, Navy, or Marine Corps on the retired list shall draw or receive any pension under any law."

Soldiers in the civil service.
Payment of pensions withheld.
Mar. 1, 1879, v. 20, p. 327.

2262. All persons who, under and by virtue of the first section of the act entitled "An act supplementary to the several acts relating to pensions," approved March third, eighteen hundred and sixty-five, were deprived of their pensions during any portion of the time from the third of March, eighteen hundred and sixty-five, to the sixth of June, eighteen hundred and sixty-six, by reason of their being in the civil service of the United States, shall be paid their said pensions, withheld by virtue of said section of the act aforesaid, for and during the said period of time from the third of March, eighteen hundred and sixty-five, to the sixth of June, eighteen hundred and sixty-six.[1] *Act of March 1, 1879* (*20 Stat. L.*, *327*).

---

[1] The act of June 6, 1866 (14 Stat. L., 57), repealed the requirement of the act of March 3, 1865, depriving certain persons employed in the civil service of the United States of pensions to which they were otherwise entitled.

CHAPTER XLI.

THE SOLDIERS' HOME.

Par.
2263–2265. Board of commissioners; duties.
2266. Inspections.
2267, 2268. Officers, appointment, duties.
2269–2274. Funds for support of Home.
2275–2278. Admission and discharge of inmates.
2279. Outdoor relief.
2280–2282. Pensions to inmates.
2283–2286. Miscellaneous requirements.

BOARD OF COMMISSIONERS.

Board of commissioners of the Soldiers' Home. Mar. 3, 1851, c. 25, s. 2, v. 9, p. 595; Mar. 3, 1859, c. 83, s. 4, v. 11, p. 434; Mar. 3, 1883, s. 10, v. 22, p. 565. Sec. 4815, R.S.

2263. The Board of Commissioners of the Soldiers' Home shall hereafter consist of the General in Chief commanding the Army, the Surgeon-General, the Commissary-General, the Adjutant-General, the Quartermaster-General, the Judge-Advocate-General and the Governor of the Home, and the General in Chief shall be President of the Board, and any four of them shall constitute a quorum for the transaction of business; whose duty it shall be to examine and audit the accounts of the treasurer quarter-yearly, and to visit and inspect the Soldiers' Home at least once in every month. The majority shall also have power to establish, from time to time, regulations for the general and internal direction of the institution, to be submitted to the Secretary of War for approval; and may do any other acts necessary for the government and interests of the same, as authorized by this chapter.[1] *Sec. 10, act of March 3, 1883, (22 Stat. L., 565).*

---

[1] The "Military Asylum for the Relief and Support of Invalid and Disabled Soldiers of the Army of the United States" was established by the act of March 3, 1851 (9 Stat. L., 595) (*a*). For the support of the institution thus established the following funds were set apart: (a) Any unexpended balance of the appropriation made by the act of March 2, 1847 (9 Stat. L., 149), for the benefit of soldiers disabled by wounds; (b) the sum of $118,791.19, levied by the commanding general of the Army of the United States in Mexico, during the war with that republic, for the benefit of the soldiers of the United States Army, regulars and volunteers, who were engaged in that war, but taken possession of as funds of the United States and placed in the Treasury; (c) all stoppages and fines adjudged against soldiers by sentence of

---

[a] The act of Congress establishing the Military Asylum does not constitute the commissioners a corporation with capacity to sue and be sued. V Opin. Att. Gen., 398; see note 1 to paragraph 2285, *post*.

DUTIES OF COMMISSIONERS.

Sites and buildings.
Sec. 8, *ibid.*, p. 597.
Sec. 4817, R.S.

2264. The commissioners of the Soldiers' Home, by and with the approval of the President, shall procure for immediate use, at a suitable place or places, a site or sites for the Soldiers' Home, and if the necessary buildings can not be procured with the sites, to have the same erected, having due regard to the health of the locations, facility of access, and economy, and giving preference to such places as, with the most convenience and least cost, will accommodate the persons entitled to the benefits of the Soldiers' Home.

Board of commissioners to make annual report, etc.
Mar. 3, 1883, v. 22, p. 565.

2265. The board of commissioners of the Soldiers' Home shall every year report in writing to the Secretary of War, giving a full statement of all receipts and disbursements of money, of the manner in which the funds are invested of any changes in the investments and the reasons therefor, of all admissions and discharges, and generally of all facts that may be necessary to a full understanding of the condition and management of the Home. The Secretary of War shall have power to call for and require any omitted facts which in his judgment should be stated to be added.

Secretary of War to transmit report, etc., to Congress.

This annual report shall be, by the Secretary of War, together with the report of the inspecting officer hereinafter provided for, transmitted to Congress at the first session thereafter, and he shall also cause the same to be published in orders to the Army, a copy thereof to be deposited in each garrison and post library. *Act of March 3, 1883 (22 Stat. L., 565).*

---

court-martial, over and above any amount that may be due for the reimbursement of Government or of individuals; (d) all forfeitures on account of desertion; (e) all moneys, not exceeding two-thirds of the balance on hand of the hospital fund, and of the post fund of each military station, after deducting the necessary expenses of the year; (*a*) and (f) all moneys belonging to the estates of deceased soldiers, which now are or may hereafter be unclaimed for the period of three years subsequent to the death of said soldier or soldiers, to be repaid by the commissioners of the institution, upon the demand of the heirs or legal representatives of the deceased; (g) there shall also be "deducted from the pay of every noncommissioned officer, musician, artificer, and private of the Army of the United States the sum of 25 cents (*b*) per month, which sum so deducted shall, by the Pay Department of the Army, be passed to the credit of the commissioners of the asylum, who are hereby authorized to receive all donations of money or property made by any person or persons for the benefit of the institution, and hold the same for its sole and exclusive use." Sec. 7, act of March 3, 1851, 9 Stat. L., 596.

In passing upon recommendations made by the board of commissioners of the Soldiers' Home, under section 4815 of the Revised Statutes, the Secretary of War is invested with a discretionary power to approve or disapprove the same. XVII Opin. Att. Gen., 449.

---

[a] This clause was repealed by section 2 of the act of July 5, 1862. (12 Stat. L., 508.)

[b] The deduction from the monthly pay of enlisted men, fixed at 25 cents per month by section 7, act of March 3, 1851 (9 Stat. L., 596), was reduced to 12½ cents by section 7, act of March 3, 1859 (11 Stat. L., 424).

INSPECTIONS.

2266. The Inspector-General of the Army shall, in person, once in each year thoroughly inspect the Home, its records, accounts, management, discipline, and sanitary condition, and shall report thereon in writing, together with such suggestions as he desires to make. *Sec. 2, act of March 3, 1883 (22 Stat. L., 564).*

Inspector-General of Army to inspect and make report, etc.
Sec. 2, Mar. 3, 1883, v. 22, p. 564.

OFFICERS.

2267. The officers of the Soldiers' Home shall consist of a governor, a deputy governor, and a secretary, for each separate site of the home, the latter to be also the treasurer; and the officers shall be taken from the Army and appointed or removed, from time to time, as the interests of the institution may require, by the Secretary of War, on the recommendation of the board of commissioners.[1]

Officers.
Mar. 3, 1851, c. 25, s. 3, v. 9, p. 595.
Sec. 4816, R. S.

2268. The governor and all other officers of the Home shall be selected by the President of the United States, and the treasurer of the Home shall be required to give a bond in the penal sum of twenty thousand dollars for the faithful performance of his duty.[2] *Sec. 7, act of March 3, 1883 (22 Stat. L., 564).*

Governor and officers selected by the President of the United States.
Treasurer to give bond.
Sec. 7, Mar. 3, 1883, v. 22, p. 564.

---

[1] The commissioners of the Soldiers' Home may permit the governor, deputy governor, and treasurer of the Home, who are retired officers of the Army and who reside at the Home, to make use of ordinary supplies of fuel, light, forage, etc., produced at the Home or purchased for it, and they may pay the treasurer, out of the funds of the Home, a salary for his services. XX Opin. Att. Gen., 350.

The funds for the support of the Soldiers' Home are not of the class of public moneys annually appropriated for a specific object, as for the pay of the Army, but a special trust fund committed to and administered by the board of commissioners for the benefit of the institution. From an early period in the history of the Home it has been the usage for the commissioners to permit the officers of the Home (retired officers of the Army residing at the Home) gratuitously to receive and use a reasonable portion of the ordinary supplies of fuel, light, forage, milk, ice, and vegetables, either produced at the Home or obtained for its consumption. *Held*, that such allowance was not in contravention of law; that the articles thus issued are not of the class of military pay and emoluments, and therefore unauthorized because not allowed by law to retired officers, but are a reasonaple share of the supplies for the use and benefit of the Home, the disposition of which is properly within the discretion of the commissioners as trustees of the funds of the Home and as charged by law with the "government and interests of the same." And similarly *held* in regard to the amount of $1,000, allowed annually out of such funds to the treasurer of the Home as a compensation for his special services and in consideration of his pecuniary responsibility as a bonded officer. Dig. Opin. J. A. G., par. 2331.

Held, that a medical officer of the Army, occupying quarters at the Soldiers' Home, was not thereby precluded from receiving commutation of quarters at New York on being ordered to duty there as a member of a medical examining board. The quarters occupied by him at the Home are not "public quarters" in the sense of par. 1480, A. R.; he does not occupy them at the expense of the United States, and by allowing him the commutation the Government is not put to a double expense for his quarters. Ibid., par. 2332.

[2] The board of commissioners of the Soldiers' Home can not delegate to the governor of the Home discretionary police authority for the preservation of good order within its limits. XX Opin. Att. Gen., 514. They can not empower him to arrest,

FUNDS FOR SUPPORT OF THE SOLDIERS' HOME.

Funds for Soldiers' Home.
Mar. 3, 1851, c. 25, s. 7, v. 9, p. 596; July 5, 1862, c. 133, s. 2, v. 12, p. 508.
Sec. 4818, R. S.

2269. For the support of the Soldiers' Home the following funds are set apart and are hereby appropriated: All stoppages or fines adjudged against soldiers by sentence of courts-martial over and above any amount that may be due for the reimbursement of Government or of individuals; all forfeitures on account of desertion; and all moneys belonging to the estates of deceased soldiers which are or may be unclaimed for the period of three years subsequent to the death of such soldiers, to be repaid by the commissioners of the institution upon the demand of the heirs or legal representatives of the deceased.[1]

Limit of adjustment of accounts.
July 16, 1892, v. 27, p. 183.

2270. Hereafter the adjustment of the accounts of the Soldiers' Home under section 4818 of the Revised Statutes in the offices of the Second Comptroller and Second Auditor shall be limited to those originating subsequent to March 3, 1881. *Act of July 16, 1892* (*27 Stat. L.*, *183*).

Deduction from pay.
Mar. 3, 1851, c. 25, s. 7, v. 9, p. 596; Mar. 3, 1859, c. 83, s. 7, v. 11, p. 434.
Sec. 4819, R. S.

2271. There shall be deducted from the pay of every noncommissioned officer, musician, artificer, and private of the Army of the United States the sum of twelve and a half cents per month, which sum so deducted shall by the Pay Department of the Army be passed to the credit of the commissioners of the Soldiers' Home. The commissioners are also authorized to receive all donations of money or property made by any person for the benefit of the institution and hold the same for its sole and exclu-

---

detain, or deliver over to the court authorities nonmilitary persons committing crimes less than capital, except in the cases where any person may make an arrest without warrant or precept. Ibid.

[1] Section 4818, Revised Statutes, appropriates as one of the funds for the support of the Soldiers' Home "all forfeitures on account of desertion." *Held*, that this appropriation included the retained pay of soldiers as forfeited by desertion under the provisions of sections 1281 and 1282, Revised Statutes, and of the act of June 16, 1890, chapter 426, section 1. The retained pay is merely a fraction of the monthly pay of the soldier earned with the rest of his monthly pay as a part of the entire consideration for service rendered, but of which the payment—the right to receive—is deferred. The theory that it is not to be regarded as earned till the soldier's service is concluded and he receives an honorable discharge is rebutted by the statutory provisions above cited, and especially by the provision of the act of 1890, which treats the retained pay as pay constantly accruing and as a continuing deposit for the use of the soldier drawing interest from the end of each year in which it accrues. The ruling of the Supreme Court in United States *v.* Landers (92 U. S., 77) is not opposed to this view, but as construed by the same court in United States *v.* Kingsley (138 U. S., 87), shows that the "forfeiture" referred to in sections 1281 and 1282, Revised Statutes, was regarded by the court as meaning a loss of an acquired right, and the act of 1890, passed since this ruling, has confirmed this interpretation. Thus a soldier in deserting forfeits with the main portion of his pay the portion which has been retained, his right to this lesser portion being as much acquired and perfected as his right to the greater portion. Both forfeitures rest upon the same basis, and the aggregate forfeiture of both is appropriated by the statute to the support of the Soldiers' Home. Dig. Opin. J. A. G., par. 2333.

sive use. But the deduction of twelve and a half cents per month from the pay of noncommissioned officers, musicians, artificers, and privates of regiments of volunteers or other corps or regiments raised for a limited period or for a temporary purpose or purposes shall only be made with their consent.[1]

Funds, etc., of the Home to be deposited in the Treasury, United States as a permanent fund.

Sec. 8, Mar. 3, 1883, v. 22, p. 565.

Interest.

Principal sum to be used only by resolution of board, etc.

2272. That all funds of the Home not needed for current use, and which are not now invested in United States registered bonds, shall, as soon as received, or as soon as present investments can be converted into money without loss, be deposited in the Treasury of the United States to the credit of the Home as a permanent fund, and shall draw interest at the rate of three per centum per annum, which shall be paid quarterly to the treasurer of the Home; and the proceeds of such registered bonds, as they are paid, shall be deposited in like manner. No part of the principal sum so deposited shall be withdrawn for use except upon a resolution of the board of commissioners stating the necessity and approved by the Secretary of War. *Sec. 8, act of March 3, 1883 (22 Stat. L., 565).*

United States Treasurer to be custodian of funds, etc., of.

Jan. 16, 1891, v. 26, p. 718.

Transfer of funds to assistant treasurer in New York.

2273. That the Treasurer of the United States be, and he is hereby, authorized and directed to receive and keep on deposit, subject to the checks or drafts of the treasurer of the Soldiers' Home in the District of Columbia, all funds which may now be under the control of the said treasurer of the Soldiers' Home, or may hereafter be furnished him or in any manner come into his possession for use in defraying the current expenses of maintaining the said Soldiers' Home, and, upon the request of said treasurer of the Soldiers' Home, there shall be transferred, from funds to his credit with the United States Treasurer, and placed to his credit with the assistant treasurer of the United States in New York City, New York, such sums as he may require monthly or quarterly for payments on account of "outdoor relief" to members of the said Soldiers' Home residing at a distance therefrom. *Act of January 16, 1891 (26 Stat. L., 718).*

Borrowing money on credit of Home prohibited.

Sec. 9, Mar. 3, 1883, v. 22, p. 565.

2274. No officers of the Home shall borrow any money on the credit of the Home for any purpose, nor shall any pledge of any of its property or securities for any purpose be valid. *Sec. 9, act of March 3, 1883 (22 Stat. L., 565).*

---

[1] The act of March 16, 1896 (29 Stat. L., 60), contained the requirement that no pay should thereafter be retained from enlisted men, but excepted therefrom the deductions authorized to be made on account of the Soldiers' Home.

ADMISSION AND DISCHARGE OF INMATES.

Who may become members of the Soldiers' Home.
Mar. 3, 1851, c. 25, s. 1, v. 9, p. 595; Mar. 3, 1859, c. 83, ss. 5, 7, v. 11, p. 434.
Sec. 4814, R. S.

2275. All soldiers of the Army of the United States, and all soldiers who have been, or may hereafter be, of the Army of the United States, and who have contributed, or may hereafter contribute, according to section forty-eight hundred and nineteen, to the support of the Soldiers' Home hereby created, and the invalid and disabled soldiers, whether regulars or volunteers, of the war of eighteen hundred and twelve and of all subsequent wars, shall, under the restrictions and provisions which follow, be members of the Soldiers' Home, with all the rights annexed thereto.[1]

What persons are entitled to benefits of Soldiers' Home.
Mar. 3, 1851, c. 25, s. 4, v. 9, p. 596, Mar. 3, 1859, c. 83, s. 5, v. 11, p. 434.
Sec. 4821, R. S.

2276. The following persons, members of the Soldiers' Home, according to section forty-eight hundred and fourteen, shall be entitled to the rights and benefits herein conferred, and no others:

First. Every soldier of the Army of the United States who has served, or may serve, honestly and faithfully twenty years in the same.

Second. Every soldier and every discharged soldier, whether regular or volunteer, who has suffered, or may suffer, by reason of disease or wounds incurred in the service and in the line of his duty, rendering him incapable of further military service, if such disability was not occasioned by his own misconduct.

Third. The invalid and disabled soldiers, whether regular or volunteers, of the wars of eighteen hundred and twelve and of all subsequent wars.[2]

Who are excluded.
Mar. 3, 1851, c. 25, s. 6, v. 9, p. 596.
Sec. 4822, R. S.

2277. The benefits of the Soldiers' Home shall not be extended to any soldier in the regular or volunteer service convicted of felony or other disgraceful or infamous crimes of a civil nature after his admission into the service of the United States; nor shall any one who has been a deserter, mutineer, or habitual drunkard be received without such evidence of subsequent service, good conduct, and reformation of character as is satisfactory to the commissioners.

---

[1] This section and 4815 recognize two classes of beneficiaries: 1. Soldiers who, while in the service, contributed voluntarily to the support of the Home. 2. Soldiers who did not contribute. Those who contributed have a right to membership without surrendering their pensions to the Home. Under section 4820 of the Revised Statutes, those who did not contribute may become members by making such surrender. Bowen *v.* U. S., 100 U. S., 508; ibid., 14 Ct. Cls., 162.

[2] *Held* that under section 4821, Revised Statutes, invalid and disabled soldiers of the war of the rebellion and of Indian wars were entitled to the benefits of the Soldiers' Home, although the disability may not have grown out of their military service, provided it be not the result of their own misconduct as indicated in section 4822, Revised Statutes. Dig. Opin. J. A. G., 705, par. 1.

Discharge.
Sec. 5, *ibid.*
Sec. 4823, R.S.

2278. Any soldier admitted into the Soldiers' Home for disability who recovers his health, so as to become fit again for military service, if under fifty years of age, shall be discharged.[1]

OUTDOOR RELIEF.

Aid to persons, etc., by outdoor relief.
Sec. 6, Mar. 3, 1883, v. 22, p. 565.

2279. That the board of commissioners are authorized to aid persons who are entitled to admission to the Home, by outdoor relief, in such manner and to such an extent as they may deem proper; but such relief shall not exceed the average cost of maintaining an inmate of the Home. *Sec. 6, act of March 3, 1883* (*22 Stat. L., 565*).

PENSIONS TO INMATES.

Rights of pensioners and surrender of pensions.
Mar. 3. 1851, c. 25, s. 5, v. 9, p. 596; Mar. 3, 1859, c. 83, s. 6, v. 11, p. 434.
Sec. 4820, R.S.

2280. The fact that one to whom a pension has been granted for wounds or disability received in the military service has not contributed to the funds of the Soldiers' Home shall not preclude him from admission thereto. But all such pensioners shall surrender their pensions to the Soldiers' Home during the time they remain therein and voluntarily receive its benefits.[2]

Pension inmates of Home can allot portion of pension, etc.

Pensions, etc., to be paid to treasurer.
Sec. 4, Mar. 3, 1883, v. 22, p. 564.

2281. Any inmate of the Home who is receiving a pension from the Government, and who has a child, wife, or parent living, shall be entitled, by filing with the pension agent from whom he receives his money a written direction to that effect, to have his pension, or any part of it, paid to such child, wife, or parent. The pensions of all who now are or shall hereafter become inmates of the Home, except such as shall be assigned as aforesaid, shall be paid to the treasurer of the Home. The money thus derived shall not become a part of the funds of the Home, but shall be held by the treasurer in trust for the pen-

---

[1] An inmate is not required to remain at the Home if he wishes to leave it. The privileges of the institution may be renounced by any act showing an intention to renounce them—such as direct notice of such intention, or by an absenting with the evident purpose of not returning. In February, 1864, a certain inmate was transferred from the Home to the Government Insane Hospital, and was discharged thence as sane in June, 1864. He did not return to the Home and was not again heard of till March, 1886, when it was ascertained that he was at the State Insane Hospital of Pennsylvania. As he was sane when he left the Government Hospital and did not return to the Home within a reasonable time, but remained absent nearly twenty-two years, *held* that he must be deemed, in the absence of contrary evidence, to have intended to permanently separate himself from the institution, and that he therefore was not now an inmate or member of the same. Dig. Opin. J. A. G., par. 2329.

[2] Section 4820, Revised Statutes, admits of no other reasonable construction than that only invalid pensioners who had *not* contributed to the funds of the Soldiers' Home were bound to surrender to it their pensions while receiving its benefits. U. S. *v.* Bowen, 100 U. S., 508; but see paragraph 2281, *post.*

Pension paid in full on discharge of pensioner from the Home.

Death of pensioner; money due, etc., paid to legal heirs.

sioner to whom it would otherwise have been paid, and such part of it as shall not sooner have been paid to him shall be paid to him on his discharge from the institution. The board of commissioners may from time to time pay over to any inmate such part of his pension money as they think best for his interest and consistent with the discipline and good order of the Home, but such pensioner shall not be entitled to demand or have the same so long as he remains an inmate of the Home. In case of the death of any pensioner, any pension money due him remaining in the hands of the treasurer shall be paid to his legal heirs, if demand is made within three years; otherwise the same shall escheat to the Home. *Sec. 4, act of March 3, 1883 (22 Stat. L., 564).*

Payment of one-half of pension to wife, etc., Mar. 3, 1899, v. 30, p. 1379

2282. If any such pensioner is or shall become an inmate of a National Soldiers' Home, one-half of the pension drawn in his behalf, or to which he may become entitled during his residence therein, shall be paid by the treasurer of that institution to such pensioner's wife, she being in necessitous circumstances and a woman of good moral character, or, if there be no wife, to the legal guardian of the minor child or children, or the permanently dependent and helpless child or children of such pensioner, on the order of the Commissioner of Pensions.[1] *Act of March 3, 1899 (30 Stat. L., 1379).*

MISCELLANEOUS PROVISIONS.

Inmates subject to Articles of War.
Mar. 3, 1859, c. 83, s. 7, v. 11, p. 434.
Sec. 4824, R. S.

2283. All persons admitted into the Soldiers' Home shall be subject to the Rules and Articles of War in the same manner as soldiers in the Army.[2]

Uniform to be furnished inmates free of cost.
Sec. 5, Mar. 3, 1883, v. 22, p. 565.

2284. A suitable uniform shall be furnished to every inmate of the Home, without cost to him.[3] *Sec. 5, act of March 3, 1883 (22 Stat. L., 565).*

Expenditures limited, etc., except on approval of board.

2285. No new buildings shall be erected or new grounds purchased, nor shall any expenditure of more than five thousand dollars be made, until the action of the board thereon shall be approved by the Secretary of War. All supplies that can be purchased upon contract shall be so purchased, after due notice by advertisement, of the lowest responsible bidder. Such bidder shall give bond, with proper security, for the performance of his contract.[1] *Sec. 3, act of March 3, 1883 (22 Stat. L., 565).*

---

[1] For remainder of this enactment see paragraphs 2224 and 2230, *ante.*

[2] Section 4824, Revised Statutes, subjecting the inmates of the Soldiers' Home to the Rules and Articles of War, is unconstitutional and a dead letter. These inmates are no part of the Army, nor are they supported by the United States. They are civilians occupying dwellings and sustained by funds held in trust for them. The territory of the Home being within the District of Columbia, and not having been exempted by Congress from the operation of the criminal laws of the District, the inmates are subject to those laws like any other residents. [Compare opinion of Attorney-General in XX Opins., 514.] Dig. Opin., J. A. G., par. 2328.

[3] The inmates of the Soldiers' Home wear the uniform of soldiers of the Army. They are therefore within the operation of section 1181 of the Revised Statutes relating to the District of Columbia, which makes penal the selling of liquor to persons wearing the uniform of soldiers. Ibid., p. 705, par. 3.

Supplies, how purchased.
Sec. 3, Mar. 3, 1883, v. 22, p. 565.

2286. On and after the passage of this act no license for the sale of intoxicating liquor at any place within one mile of the Soldiers' Home property in the District of Columbia shall be granted. *Act of February 28, 1891 (26 Stat. L., 797).*

Liquor licenses prohibited within 1 mile of Soldiers' Home, D. C.
Feb. 28, 1891, v. 26, p. 797.

---

[1] Contracts for the Home should be entered into, not by the "Soldiers' Home," which is not an incorporated institution, but by the board of commissioners, who, as trustees for the Home, may make contracts which will bind the United States. Dig. Opin., J. A. G., par. 2330.

Section 11 of the act of March 3, 1883 (22 Stat. L., p. 565), contains the provision "that all laws and parts of laws relating to the Soldiers' Home now in force and not inconsistent with this act are continued in force, and such as are inconsistent herewith are to that extent repealed." Section 12 of the same act contained the requirement that "the sum of ten thousand dollars is hereby appropriated out of any money in the Treasury not otherwise appropriated to be expended by the Secretary of the Treasury in the employment of additional clerical force to be used in adjusting the accounts in the Treasury Department of those funds which under the law belong to the Soldiers' Home."

UNIVERSITY OF CALIFORNIA

CHAPTER XLII.

THE NATIONAL HOME FOR DISABLED VOLUNTEER SOLDIERS.

Par.
2287–2297. Board of Managers: General Officers.
2298–2304. Officers of branch homes.
2305–2309. Estimates and appropriations.
2310–2315. Purchases.
2316–2318. Accounts.
2319, 2320. Establishment of branch homes.
2321–2324. State and Territorial Homes.
2325. Admissions to the Home.
2326. Transfer of inmates.
2327. Outdoor relief.
2328–2330. Pensions to inmates.
2331. Insane patients.
2332–2339. Miscellaneous requirements.

THE BOARD OF MANAGERS: GENERAL OFFICERS.

Par.
2287. Organization of Home.
2288. Election of managers.
2289. Election of officers.
2290. Expenses of Board of Managers.
2291. Salaried officers.
2292. Bond of general treasurer.
2293. Assistant to general treasurer.
2294. Bonds of depositories.
2295. Inspection by Secretary of War.
2296. Duties of Board of Managers.
2297. Estimates to show salaries.

Organization of the National Home for Disabled Volunteer Soldiers.
Mar. 21, 1866, c. 21, s. 1, v. 14, p. 10; Jan. 23, 1873, c. 51, s. 1, v. 17, p. 417; Mar. 3, 1875, c. 129, v. 18, p. 359; Feb. 26, 1875, J.R. No. 5, v. 18, p. 524.
Sec. 4825, R.S.

2287. The President, Secretary of War, Chief Justice, and such other persons as have been or from time to time may be associated with them, shall constitute a board of managers of an establishment for the care and relief of the disabled volunteers of the United States Army, to be known by the name and style of "The National Home for Disabled Volunteer Soldiers," and have perpetual succession, with powers to take, hold, and convey real and personal property, establish a common seal, and to sue and be sued in courts of law and equity; and to make by-laws, rules, and regulations, not inconsistent with law, for carrying on the business and government of the Home, and to affix penalties thereto.

Election of citizen managers.
Mar. 21, 1866, c. 21, s. 3. v. 14, p. 10; Mar. 12, 1867, c. 1. v. 15, p. 1; Jan. 23, 1873, c. 51, s. 1, v. 17, p. 417.
Sec. 4826, R.S.

2288. Eleven managers of the National Home for Disabled Volunteers shall be elected from time to time, as vacancies occur, by joint resolution of Congress. They shall all be citizens of the United States, and all residents of States which furnished organized bodies of soldiers to aid in suppressing the rebellion commenced in eighteen hundred and sixty-one; and no two of them shall be residents of the same State, and no person who gave aid or countenance to the rebellion shall ever be eligible. The term of office of these managers shall be for six years, and until a successor is elected.[1]

Election of officers of the Board of Managers.
Mar. 21, 1866, c. 21, s. 2, v. 14, p. 10; Jan. 23, 1873, c. 51, s. 1, v. 17, p. 417.
Sec. 4827, R. S.

2289. The fourteen managers of the National Home for Disabled Volunteer Soldiers shall elect from their own number a president, who shall be the chief executive officer of the board, two vice-presidents, and a secretary. Seven of the board, of whom the president or one of the vice-presidents shall be one, shall form a quorum for the transaction of business at any meeting of the board.[2]

Expenses of Board of Managers.
Aug. 18, 1894, v. 28, p. 412.
Sec. 4828, R. S.

2290. Hereafter no member of the Board of Managers of the National Home for Disabled Volunteer Soldiers shall receive any compensation or pay for any services or duties connected with the Home; but the traveling and other actual expenses of a member, incurred while upon the business of the Home, may be reimbursable to such member. *Act of August 18, 1894 (28 Stat. L., 412).*

Officers who may receive salaries.

2291. The president and secretary of the Board of Managers may receive a reasonable compensation for their services as such officers, not exceeding four thouand dollars and two thousand dollars, respectively, per annum. *Ibid.*

Bond of general treasurer.
Aug. 18, 1894, v. 28, p. 412.

2292. The general treasurer[3] shall give good and sufficient bond to the United States in a sum not less than one hundred thousand dollars, as the Secretary of War may direct, and to be approved by him, faithfully to account for all public moneys and property which he may receive.

Assistant to general treasurer, bond.
June 6, 1900, v. 31, p. 636.

2293. The assistant general treasurer and assistant inspector-general shall hereafter, in the necessary absence or inability of the general treasurer, from any cause whatever, perform his duties and give bond to the general treasurer for the faithful performance of such duties, but

---

[1] The number of managers to be elected by joint resolution of Congress was fixed at ten by section 3 of the act of March 3, 1887 (24 Stat. L., 444), and at eleven by joint resolution No. 21, of March 3, 1891 (26 ibid., 1117).

[2] The following-named general officers were provided for in the act of appropriation of March 3, 1901 (31 Stat. L., 1178), at the rates of compensation set opposite their respective designations:

President of the Board of Managers	$4,000
Secretary of Board of Managers	2,000
General treasurer	4,000
Inspector-general	2,500
Assistant to general treasurer and assistant inspector-general	2,000
Assistant inspectors-general, each	2,000

[3] The act of June 6, 1900 (31 Stat. L., 636), and prior acts of appropriation have contained the requirement that the general treasurer shall not be a member of the Board of Managers.

the general treasurer shall in every respect be responsible on his bond to the United States for any default on the part of such assistant general treasurer and assistant inspector-general.[1] *Act of June 6, 1900 (31 Stat. L., 636).*

Bonds of depositories. July 9, 1896, s. 2, v. 29, p. 129.

2294. From and after the passage of this act it shall be the duty of the Secretary of the Treasury to require from the president and cashier of all banks used as depositories by the treasurer of the Home a deposit of bonds sufficient in amount to fully secure all moneys pertaining to said Home left on deposit with any such bank. *Sec. 2, act of July 9, 1896 (29 Stat. L., 129).*

INSPECTIONS.

Inspections. Aug. 18, 1894, v. 28, p. 412.

2295. Hereafter, once in each fiscal year, the Secretary of War shall cause a thorough inspection to be made of the National Home for Disabled Volunteer Soldiers, its records, disbursements, management, discipline, and condition, such inspection to be made by an officer of the Inspector-General's Department, who shall report thereon in writing, and said report shall be transmitted to Congress at the first session thereafter.[2] *Act of August 18, 1894 (28 Stat. L., 412).*

Duties of Board of Managers. Mar. 21, 1866, c. 21, s. 5, v. 14, p. 11. Jan. 23, 1873, c. 32, s. 1, v. 17, p. 417. Sec. 4834, R. S.

2296. The Board of Managers shall make an annual report of the condition of the National Home for Disabled Volunteer Soldiers to Congress on the first Monday of every January; and the board shall examine and audit the accounts of the treasurer and visit the Home quarterly.

Estimates to show salaries, etc. Aug. 5, 1892, v. 27, p. 384.

2297. Hereafter the statement of expenses of the Board of Managers of the National Home for Disabled Volunteer Soldiers shall each year be submitted in the annual Book of Estimates and shall be made to show the amount of salary or compensation paid to each of the officers and employees of said board, and there shall also be submitted therewith a statement showing the number of officers appointed at each of the Branch Homes under section four thousand eight hundred and twenty-nine of the Revised Statutes, the amount of salary or compensation paid to each, and the amount of allowance to each, if any, for contingent or other expenses.[3] *Act of August 5, 1892 (27 Stat. L., 384).*

---

[1] This enactment replaces the requirement of the act of July 1, 1898 (30 Stat. L., 639), which empowered the general treasurer to authorize a clerk to perform the duties above described.

[2] The inspection required by this statute is in addition to the inspection service performed by the inspectors acting under the direction of the Board of Managers. (See par. 2269, *ante.*)

[3] This enactment replaces the acts of March 3, 1885, and March 3, 1887, *in pari materia.* The act of March 3, 1885 (23 Stat. L., 478), contained the following requirement: "Hereafter there shall annually be submitted to the Secretary of War a

OFFICERS OF THE BRANCHES OF THE NATIONAL HOME.

Par.
2298. Designation and appointment.
2299. Medical officers, exception.
2300. Salaries to be classified.
Par.
2301. Not to be connected with liquor traffic.
2302. Traveling expenses.
2303, 2304. Bonds.

Officers.

Qualification.
Apr. 11, 1892, v. 27, p. 15.
Sec. 4829, R. S.

2298. The officers of the National Home shall consist of a governor, a deputy governor, a secretary, a treasurer, and such other officers as the managers may deem necessary. They shall be appointed from honorably discharged soldiers who served as mentioned in the following section;[1] and they may be appointed and removed, from time to time, as the interests of the institution may require, by the Board of Managers. *Act of April 11, 1892 (27 Stat. L., 15).*

Exemption of medical officers.
Feb. 9, 1897, v. 29, p. 517.

2299. Surgeons, assistant surgeons, and other medical officers of the National Home for Disabled Volunteer Soldiers, and the several Branches thereof, may be appointed from others than those who have been disabled in the military service of the United States. *Act of February 9, 1897 (29 Stat. L., 517).*

Rates of pay to be classified.
Aug. 18, 1894, v. 28, p. 412.

2300. The Board of Managers shall classify all the officers and employees of the National Home for Disabled Volunteer Soldiers and establish a rate of pay and allowance for each class, and the rate so established shall not be increased by fees, perquisites, allowances, or advantages under any pretense whatever; and no employee shall be borne on more than one pay roll or voucher.[2] *Act of August 18, 1894 (28 Stat. L., 412).*

---

detailed statement of the expenses of the Board of Managers of the National Home for Disabled Volunteer Soldiers, who shall submit the same to Congress at the beginning of each session thereof." The act of March 3, 1887 (24 Stat. L., 509), provided that "hereafter the detailed statement of the expenses of the Board of Managers of the National Home for Disabled Volunteer Soldiers shall be reported direct to Congress in the annual report of the Board of Managers."

[1] See section 4830, Revised Statutes, paragraph 2319, *post;* but see paragraph 2299, *post,* which exempts certain medical officers from the operation of sections 4829 and 4830, Revised Statutes.

[2] The following rates of pay were established in the acts of August 18, 1894 (28 Stat. L., 409), and March 2, 1895 (28 Stat. L., 952): For president of the Board of Managers, four thousand dollars; secretary of the Board of Managers, two thousand dollars; one general treasurer, who shall not be a member of the Board of Managers, three thousand dollars; one inspector-general, two thousand five hundred dollars; one assistant inspector-general, two thousand dollars; clerical services for the offices of the president and general treasurer, four thousand five hundred dollars; messenger service for president's office, one hundred and forty-four dollars; messenger service for secretary's office, fifty-two dollars; clerical services for managers, one thousand five hundred dollars; agents, two thousand four hundred dollars; for traveling expenses of the Board of Managers, their officers and employees, eleven thousand five hundred dollars; for outdoor relief, one thousand seven hundred and fifty dollars; for rent, medical examinations, stationery, telegrams, and other incidental expenses, two thousand five hundred dollars; in all, thirty-seven thousand eight hundred and forty-six dollars.

Officers not to be connected with liquor traffic.
Mar. 3, 1887, v. 24, p. 540.

2301. No person shall be eligible to or hold any position or employment in the government or management of any Home who is interested in or connected with, directly or indirectly, any brewery, dramshop, or distillery in the State where such Home is located. *Act of March 3, 1887 (24 Stat. L., 540).*

TRAVELING EXPENSES.

Traveling expenses of officers.
Aug. 18, 1894, v. 28, p. 412.

2302. When an officer of the National Home for Disabled Volunteer Soldiers, not a member of the Board of Managers thereof, travels under orders on business for the Home he shall be allowed seven cents in lieu of all other expenses for each mile actually traveled, distance to be computed by the most direct through route. *Act of August 18, 1894 (28 Stat. L., 412).*

BONDS.

Bonds of treasurers of Branches.
Aug. 18, 1894, v. 28, p. 412.

2303. The treasurers of the several Branch Homes shall give good and sufficient bonds to the general treasurer in such sums as he may require, and to be approved by him, faithfully to account for all public moneys and property which they may receive. *Act of Auyust 18, 1894 (28 Stat. L., 412).*

The same.
Mar. 3, 1901, v. 31, p. 1178.

2304. Hereafter the Board of Managers of the National Home for Disabled Volunteer Soldiers may, in their discretion, designate and authorize an officer at each or any of the several Branches of the National Home for Disabled Volunteer Soldiers to perform such duties in connection with the offices of the treasurer and quartermaster at any such Branch as they may direct, and in the necessary absence or inability of either of said officers from any cause whatever to have power to act in their places and perform all of the duties connected with the said respective offices. All officers so designated and authorized to act as provided hereunder shall give bond to the general treasurer of the National Home for Disabled Volunteer Soldiers in such amount as he may require, and to be approved by him, faithfully to account for all public moneys and property which they may receive. *Act of March 3, 1901 (31 Stat. L., 1178).*

ESTIMATES AND APPROPRIATIONS.

Par.
2305. Home to be supported by appropriations.
2306. Estimates.
Par.
2307, 2308. The same; items of expenditure.
2309. Money; how drawn.

Home to be supported by appropriations.
Mar. 3, 1875, v. 18, p. 359.

2305. From and after the first day of April, eighteen hundred and seventy-five, no money shall be appropriated or drawn for the support and maintenance of what is now designated by law as the "National Home for Disabled Volunteer Soldiers," except by direct and specific annual appropriations by law.[1] *Act of March 3, 1875 (18 Stat. L., 359).*

Estimates.
Oct. 2, 1888, v. 25, p. 543.

2306. That it shall be the duty of the managers of said Home, on or before the first day of October in each year, to furnish to the Secretary of War estimates, in detail, for the support of said Home for the fiscal year commencing on the first day of July thereafter, and the Secretary of War shall annually include such estimates in his estimates for his Department. *Act of October 2, 1888 (25 Stat. L., 543).*

Detailed estimates.
Mar. 3, 1879, v. 20, p. 390.

2307. That the estimates hereafter submitted for the support of the National Home shall be made in detail, specifying the several items of expenditure, and separating the cost of food and other supplies in the form usually adopted for the Army, and that this specification be made for each soldiers' home separately. *Act of March 3, 1879 (20 Stat. L., 390).*

Itemized estimates.
Aug. 4, 1886, v. 24, p. 251.

2308. And hereafter the estimates for the support of the Home for Disabled Volunteer Soldiers shall be submitted by items. *Act of August 4, 1886 (24 Stat. L., 251).*

Money; how drawn.
Mar. 3, 1875, v. 18, p. 359.

2309. No moneys shall, after the first day of April, eighteen hundred and seventy-five, be drawn from the Treasury for the use of said Home, except in pursuance of quarterly estimates, and upon quarterly requisitions by the managers thereof upon the Secretary of War, based upon such quarterly estimates, for the support of said Home for not more than three months next succeeding such requisition. And no money shall be drawn or paid upon any such requisition while any balance heretofore drawn or received by said Home, or for its use, from the Treasury, under the laws now or heretofore existing, and now held under investment or otherwise, shall remain unexpended. *Act of March 3, 1875 (18 Stat. L., 359).*

---

[1] This statute repealed and replaced section 4831 of the Revised Statutes, which provided that "for the establishment and support of the National Home for Disabled Volunteer Soldiers there shall be appropriated all stoppages or fines adjudged against such officers and soldiers by sentence of court-martial or military commission, over and above the amounts necessary for the reimbursement of the Government or of individuals; all forfeitures on account of desertion from such service; and all moneys due such deceased officers and soldiers, which now are or may be unclaimed for three years after the death of such officers and soldiers, to be repaid upon the demand of the heirs or legal representatives of such deceased officers or soldiers. The Board of Managers are also authorized to receive all donations of money or property made by any person or persons for the benefit of the Home, and to hold or dispose of the same for its sole and exclusive use."

PURCHASES.

Par.
2310. Made under direction of Board of Managers.
2311. Expenditures.
2312. Purchases of supplies.
Par.
2313. The same; medical supplies.
2314. Receipts from sales.
2315. Funds for repairs, restriction.

To be made under direction of Board of Managers. July 1, 1898, v. 30, p. 640.

2310. Hereafter all supplies for the National Home for Disabled Volunteer Soldiers shall be purchased, shipped, and distributed as may be directed by the Board of Managers. *Act of July 1, 1898 (30 Stat. L., 640).*

Expenditures. Mar. 3, 1887, v. 24, p. 539.

2311. All of the expenditures of the said Home, including the expenses of the Board of Managers, shall be made subject to the general laws governing the disbursement of public moneys, so far as the same can be made applicable thereto, and shall be audited by the proper accounting officers of the Treasury, under such rules and regulations as may be prescribed by the Secretary of the Treasury. *Act of March 3, 1887 (24 Stat. L., 539).*

Purchase of supplies. Mar. 3, 1879, v. 20, p. 390; June 11, 1896, v. 29, p. 445. New buildings. Medicines, etc.

2312. All purchases of supplies exceeding the sum of one thousand dollars at any one time shall be made upon public tender after due advertisement, and that the expenditure for new buildings shall be expressly authorized in writing. *Act of March 3, 1879 (20 Stat. L., 390).*

Purchases from Medical Department. June 11, 1896, v. 29, p. 445.

2313. Hereafter, upon proper application therefor, the Medical Department of the Army is authorized to sell medical and hospital supplies, at its contract prices, to the National Home for Disabled Volunteer Soldiers. *Act of June 11, 1896 (29 Stat. L., 445).*

Receipts from sales. Aug. 18, 1894, v. 28, p. 412.

2314. All sums received from sales of subsistence stores or other property of the National Home for Disabled Volunteer Soldiers shall be taken up by the disbursing officer under the proper current appropriation and be available for disbursement on account of that appropriation. *Act of August 18, 1894 (28 Stat. L., 412).*

Funds for repairs. June 4, 1897, v. 30, p. 54.

2315. No part of the appropriations for repairs for any of the Branch Homes shall be used for the construction of any new building. *Act of June 4, 1897 (30 Stat. L., 54).*

ACCOUNTS.[1]

Par.
2316–2318. Preparation and rendition.

2316. All amounts disbursed from the appropriation of a Branch Home shall be disbursed and accounted for monthly to the general treasurer by the treasurer of that Branch, except such expenditures for services, stationery, tableware, clothing, and bedding as may be required by the Board of Managers to be legally made by the general treasurer; and all such stationery, tableware, clothing, and bedding as may be required for each Branch Home shall be shipped directly from the place of purchase or manufacture to such Branch Home; and all disbursements shall be made in conformity with sections thirty-six hundred and seventy-eight and thirty-six hundred and seventy-nine, Revised Statutes:[2] *Provided further*, That the balance of the posthumous fund, including the amount invested in bonds pertaining to that fund, that may be in the hands of the treasurer of any Branch of the Home on July first, eighteen hundred and ninety-four, shall be transferred to the appropriation for "Current expenses, eighteen hundred and ninety-five," of that Branch Home, and thereafter all receipts on account of the effects of deceased members shall be credited to the appropriation for "current expenses" of the fiscal year during which such amounts were received, and all repayments of such amounts shall be made from and charged to the like appropriation for the fiscal year in which such repayments shall be made. *Act of August 18, 1894 (28 Stat. L., 411).*

Accounts. Aug. 18, 1894, v. 28, p. 411.

Disbursements.

Use of posthumous fund.

Receipts from deceased members to be credited to current expenses.

---

[1] ACCOUNTS AND DISBURSEMENTS.

The accounts of the National Home for Disabled Volunteer Soldiers in their audit, examination, and settlement are subject to the general laws governing the disbursement of public moneys. A class of accounts of the Homes involving receipts or sales of property, such as flowers, provisions to officers and others connected with the Homes, and transportation of members of the Homes, should, however, be exempt from the operation of these laws. These amounts may be charged, when properly taken up day by day, on the books of the treasurer and credited on his account current without vouchers. 3 Dig. 2nd Compt. Dec., par. 846.

It is not practicable, in all cases, to apply the same rules in the settlement of accounts for moneys received from "sales of certain things" at the National Home for Disabled Volunteer Soldiers as are applied in th settlement of accounts for expenditures, including the expenses of the Board of Managers. When it is impracticable to obtain vouchers, or a statement of items of receipts from sales, the certificate of the president of the board that the abstracts of receipts are correct may be accepted. Ibid., 848.

[2] Under this provision the expenses of inspecting goods purchased for the Home are properly chargeable as an incident of the cost of such goods, and payable out of the appropriation for their purchase, in the absence of a specific appropriation for inspection. 2 Compt. Dec., 522.

The same.
Mar. 3, 1901, v. 31, p. 1178.

2317. The accounts relating to the expenditure of all public moneys appropriated for the support and maintenance of the National Home for Disabled Volunteer Soldiers shall be audited by the Board of Managers of said Home in the same manner as is provided for the accounts of the various Departments of the United States Government, and thereupon immediately transmitted directly to the proper accounting officers of the Treasury Department for final audit and settlement.[1] *Act of March 3, 1901 (31 Stat. L., 1178).*

Balances of appropriations, disposal of.
Oct. 2, 1888, v. 25, p. 543.

2318. Hereafter the provisions of section thirty-six hundred and ninety and thirty-six hundred and ninety-one of the Revised Statutes of the United States shall apply to all appropriations made for the maintenance of the National Home for Disabled Volunteer Soldiers. *Act of October 2, 1888 (25 Stat. L., 543).*

ESTABLISHMENT OF BRANCH HOMES.

Sites for homes may be purchased, and buildings erected.
Mar. 21, 1866, c. 21, s. 4, v. 14, p. 10; Jan. 23, 1873, c. 51, s. 1, v. 17, p. 417.
Sec. 4830, R. S.

2319. The Board of Managers shall have authority to procure from time to time, at suitable places, sites for military homes for all persons serving in the Army of the United States at any time in the war of the rebellion, not otherwise provided for, who have been or may be disqualified for procuring their own support by reason of wounds received or sickness contracted while in the line of their duty during the rebellion; and to have the necessary buildings erected, having due regard to the health of location, facility of access, and capacity to accommodate the persons entitled to the benefits thereof.[2]

---

[1] This enactment repeals and replaces so much of the acts of March 3, 1875 (18 Stat. L., 359), March 3, 1891 (26 ibid., 984), and March 3, 1893 (27 ibid., 646), as requires the Board of Managers to render accounts of disbursements for the several Branches of the Home to the Secretary of War, and vests in the latter a supervision of the accounts connected therewith.

[2] Under authority conferred by separate statutes Branch Homes have been established at the following places:

The Central Branch, at Dayton, Ohio.
The Northwestern Branch, at Milwaukee, Wis.
The Eastern Branch, at Togus, Me.
The Southern Branch, at Hampton, Va.
The Western Branch, at Leavenworth, Kans.
The Pacific Branch, at Santa Monica, Cal.
The Marion Branch, at Marion, Ind.
The Danville Branch, at Danville, Ill.
The Johnson City Branch, at Johnson City, Tenn.

By the act of July 7, 1898 (30 Stat. L., 668), the "jurisdiction over the places purchased for the location of the Branches of the National Home for Disabled Volunteer Soldiers, under and by authority of an act of Congress approved July 23, 1888 (*a*), in Grant County, State of Indiana, and upon which said Branch Home is located, and by authority of an act of Congress approved June 4, 1897 (*b*), 'at the town of Dan-

---

a 25 Stat. L., 340. *b* 30 Ibid., 54.

2320. The provisions of the act entitled "An act to authorize condemnation of land for sites of public buildings, and for other purposes," approved August first, eighteen hundred and eighty-eight, shall be construed to apply to the Board of Managers of the National Home for Disabled Volunteer Soldiers. *Act of July 19, 1897 (30 Stat. L., 105).*

Condemnation of lands.
July 19, 1897, v. 30, p. 105.

STATE AND TERRITORIAL HOMES.

2321. That all States or Territories which have established, or which shall hereafter establish, State homes for disabled soldiers and sailors of the United States who served in the war of the rebellion, or in any previous war, who are disabled by age, disease, or otherwise, and by reason of such disability are incapable of earning a living, provided such disability was not incurred in service against the United States, shall be paid for every such disabled soldier or sailor who may be admitted and cared for in such home at the rate of one hundred dollars per annum. The number of such persons for whose care any State or Territory shall receive the said payment under this act shall be ascertained by the Board of Managers of the National Home for Disabled Volunteer Soldiers, under such regulations as it may prescribe, but the said State or Territorial homes shall be exclusively under the control of the respective State or Territorial authorities, and the Board of Managers shall not have nor assume any management or control of said State or Territorial homes. The Board of Managers of the National Home shall, however, have power to have the said State or Territorial homes inspected at such times as it may consider necessary, and shall report the result of such inspections to Congress in its annual report. *Act of August 27, 1888 (25 Stat. L., 450).*

Disabled soldiers and sailors.
Aid to State homes for.
Aug. 27, 1888, v. 25, p. 450.

Board of Managers of National Home to make rules, etc.
Sec. 4825, R.S.

Inspection.

2322. Payments to the States or Territories * * * shall be made quarterly by the said Board of Managers for the National Home for Disabled Volunteers to the officers of the respective States or Territories entitled, duly authorized to receive such payments, and shall be accounted for as are the appropriations for the support

Payments.
Sec. 2, Aug. 27, 1888, v. 25, p. 450.

---

ville, county of Vermilion, State of Illinois,' and upon which the said Branch is now located, is hereby ceded to the respective States in which Branches are located and relinquished by the United States, and the United States shall claim nor exercise no jurisdiction over said places after the passage of this act: *Provided*, That nothing contained herein shall be construed to impair the powers and rights heretofore conferred upon the Board of Managers of the National Home for Disabled Volunteer Soldiers in and over the said places."

of the National Home for Disabled Volunteer Soldiers. *Sec. 2, act of August 27, 1888 (25 Stat. L., 450).*

Pension.
Mar. 3, 1899, v. 30, p. 1379.

2323. When a soldier or sailor enters into a State home for soldiers or sailors as an inmate thereof, one-half of his pension accruing during his residence therein shall be paid to his wife, she being a woman of good moral character and in necessitous circumstances, or if there be no wife, then to his child or children under sixteen years of age, or his permanently helpless and dependent child, if any, unless such wife and children shall also be inmates of the same institution or of some home provided for the wives and children of soldiers and sailors.[1] *Act of March 3, 1899 (30 Stat. L., 1379).*

States to pay half.
Mar. 2, 1889, v. 25, p. 975.

2324. Hereafter no State under this appropriation shall be paid a sum exceeding one-half the cost of maintenance of each soldier or sailor by such State.[2] *Act of March 2, 1889 (25 Stat. L., 975).*

ADMISSIONS TO THE HOME.

What persons are entitled to benefit of National Home.
Mar. 21, 1866, c. 21, s. 7, v. 14, p. 11; Feb. 28, 1871, Res. 45, v. 16, p. 599; Jan. 23, 1873, c. 51, s. 1, v. 17, p. 417.
S. 5, July 5, 1884, v. 23, p. 121; Mar. 2, 1887, s. 2, v. 24, p. 444; July 23, 1888, s. 5, v. 25, p. 341; May 26, 1900, v. 31, p. 217.
Sec. 4832, R. S.

2325. Hereafter the following persons only shall be entitled to the benefits of the National Home for Disabled Volunteer Soldiers and may be admitted thereto upon the order of a member of the Board of Managers, namely: All honorably discharged officers, soldiers, and sailors who served in the regular or volunteer forces of the United States in any war in which the country has been engaged, who are disabled by disease, wounds, or otherwise, and who have no adequate means of support, and by reason of such disability are incapable of earning their living.[3] *Act of May 26, 1900 (31 Stat. L., 217).*

---

[1] The act of March 3, 1899, contains the requirement that "in all cases the questions of desertion, entrance into a home, necessitous circumstances, and of good moral character shall be ascertained and determined by the Commissioner of Pensions under such rules and regulations as he shall prescribe, and the treasurers or governors of the several soldiers' and sailors' homes shall be advised of such action from time to time."

[2] Subsequent acts of appropriation contain the requirement "that one-half of any sum or sums retained by State homes on account of pensions received from inmates shall be deducted from the aid herein provided for."

[3] This enactment replaces section 5 of the act of July 5, 1884 (23 Stat. L., 121), section 2 of the act of March 2, 1887 (24 ibid., 444), and section 5 of the act of July 23, 1888 (25 ibid., 341).

The Government is under no legal obligation to provide burial places for destitute soldiers at a Volunteer Home. Section 4878, Revised Statutes, in providing that the soldiers, etc., there designated "may be buried in any national cemetery free of cost" does not require the establishment of a national cemetery specially for the purpose of interments at such a Home. Dig. Opin. J. A. G., par. 1770.

The act of January 28, 1901 (31 Stat. L., 745), contained the requirement that "all honorably discharged soldiers and sailors who served in the war of the rebellion and the Spanish-American war, and the provisional army and the volunteer soldiers and sailors of the war of eighteen hundred and twelve and of the Mexican war, who are disabled by age, disease, or otherwise, and by reason of such disability are incapable of earning a living, shall be admitted into the Home for Disabled Volunteer Soldiers."

TRANSFER OF INMATES.

Transfers of inmates.
Aug. 23, 1894, v. 28, p. 492.

2326. In the event that buildings at any Branch of the Home shall be destroyed by fire, or rendered unfit for habitation because of pestilence or by the elements, then and in that event the Board of Managers shall have authority to remove the members of said Branch so afflicted or destroyed to any other Branch not so affected; and to do this they may use any funds appropriated for the Home, notwithstanding they may have been specifically appropriated for other purposes, to the extent that such funds shall be necessary to effect such a transfer and the maintenance and support thereafter of said members so transferred, and shall report their doings therein to the Congress and their expenditures as in other cases of expenditures.

SEC. 2. This act shall take effect from and after its passage. *Act of August 23, 1894 (28 Stat. L., 492).*

OUTDOOR RELIEF.

Outdoor relief.
Limit.
Aug. 23, 1894, v. 28, p. 492.

2327. The managers of the National Home for Disabled Volunteer Soldiers are authorized to aid persons who are entitled to its benefits by outdoor relief in such manner and to such extent as they may deem proper, but such relief shall not exceed the average cost of maintaining an inmate of the Home. *Act of August 23, 1894 (28 Stat. L., 492).*

PENSIONS TO INMATES.

Pensioners, inmates of the National Home for Disabled Volunteer Soldiers, how paid.
Sec. 2, Feb. 26, 1881, v. 21, p. 350.

2328. All pensions payable or to be paid under this act, to pensioners who are inmates of the National Home for Disabled Volunteer Soldiers, shall be paid to the treasurer or treasurers of said Home, upon security given to the satisfaction of the managers, to be disbursed for the benefit of the pensioners without deduction for fines or penalties under regulations to be established by the managers of the Home; said payment to be made by the pension agent upon a certificate of the proper officer of the Home that the pensioner is an inmate thereof and is still living. Any balance of the pension which may remain at the date of the pensioner's discharge shall be paid over to him; and in case of his death at the Home, the same shall be paid to the widow or children, or in default of either to his legal representatives.[1] *Sec. 2, act of February 26, 1881 (21 Stat. L., 350).*

---

[1] But see act of August 7, 1882 (22 Stat. L., 322), paragraph 2329, *post.*

Pensions, etc., due inmates of National Home to be paid to treasurers, etc.
Aug. 7, 1882, v. 22, p. 322.

2329. All pensions and arrears of pensions payable or to be paid to pensioners who are or may become inmates of the National Home for Disabled Volunteer Soldiers shall be paid to the treasurers of said Home, to be applied by such treasurers as provided by law, under the rules and regulations of said Home. Said payments shall be made by the pension agent upon a certificate of the proper officer of the Home that the pensioner is an inmate thereof on the day to which said pension is drawn. The treasurers of said Home, respectively, shall give security, to the satisfaction of the managers of said Home, for the payment and application by them of all arrears of pension and pension moneys they may receive under the aforesaid provision. And section two of the act entitled "An act making appropriations for the payment of invalid and other pensions of the United States for the fiscal year ending June thirtieth, eighteen hundred and eighty-two, and for deficiencies, and for other purposes," approved February twenty-sixth, eighteen hundred and eighty-one, is hereby revived and continued in force.[1] *Act of August 7, 1882 (22 Stat L., 322).*

Payment of one-half of pension to wife, etc.
Mar. 3, 1899, v. 30, p. 1379.
Sec. 4766, R.S.

2330. If any such pensioner is or shall become an inmate of a National Soldiers' Home, one-half of the pension drawn in his behalf, or to which he may become entitled during his residence therein, shall be paid by the treasurer of that institution to such pensioner's wife, she being in necessitous circumstances and a woman of good moral character, or, if there be no wife, to the legal guardian of the minor child or children, or the permanently dependent and helpless child or children of such pensioner, on the order of the Commissioner of Pensions.[2] *Act of March 3, 1899 (30 Stat. L., 1379).*

INSANE PATIENTS.

Insane persons from National Home for Disabled Volunteer Soldiers to be admitted, etc.
Aug. 7, 1882, v. 22, p. 330.

2331. In addition to the persons now entitled to admission to said hospital, any inmate of the National Home for Disabled Volunteer Soldiers who is now or may hereafter become insane shall, upon an order of the president of the Board of Managers of the said National Home, be admitted to said hospital and treated therein; and if any inmate so admitted from said National Home is or thereafter becomes a pensioner, and has neither wife, minor child, nor parent dependent on him, in whole or part, for support, his arrears of pension and his pension money accruing during the period he shall remain in said hospital shall be applied to his support in said hospital, and be paid over to the proper officer of said institution for the general uses thereof. *Act of August 7, 1882 (22 Stat. L., 330).*

---

[1] For disposition of pension in case of an insane inmate, see paragraph 2331, *post.*

[2] For remainder of this section, see paragraphs 2224 and 2230, *ante.* See, also, note to paragraph 2282, *ante.*

MISCELLANEOUS REQUIREMENTS.

Par.
2332. Inmates subject to Articles of War.
2333. Building for insane.
2334. Issues of ordnance.
2335. The same; State Homes.

Par.
2336. Transportation to inmates at reduced rates.
2337. Documents to be supplied.
2338. Franking privilege.
2339. Recession of jurisdiction.

Inmates subject to Articles of War.
Mar. 21, 1866, c. 21, s. 9, v. 14, p. 11; Jan. 23, 1873, c. 51, s. 1, v. 17, p. 417.
Sec. 4835, R. S.

2332. All inmates of the National Home for Disabled Volunteer Soldiers shall be subject to the Rules and Articles of War, and in the same manner as if they were in the Army.[1]

Building for insane.
Mar. 3, 1881, v. 21, p. 447.

2333. The Secretary of War is directed to turn over to the managers of the National Home for Disabled Volunteer Soldiers all the old clothing now held for issue to the National Home. Said managers are authorized to estimate for building and maintenance at the Central Branch of a building or buildings for the safe and proper keeping of the insane. *Act of March 3, 1881 (21 Stat. L., 447).*

Condemned ordnance, gun carriages, etc.
Mar. 3, 1899, v. 30, p. 1073.

2334. The Chief of Ordnance is authorized to issue such obsolete or condemned ordnance, gun carriages, and ordnance stores as may be needed for ornamental purposes to the Homes for Disabled Volunteer Soldiers, the Homes to pay for transportation and such other expenses as are necessary. *Act of March 3, 1899 (30 Stat. L., 1073).*

Obsolete serviceable cannon.

May be delivered to Soldiers' Homes.
Feb. 8, 1889, v. 25, p. 657.

2335. The Secretary of War * * * is authorized and directed, subject to such regulations as he may prescribe, to deliver to any of the "National Homes for Disabled Volunteer Soldiers" already established or hereafter established and to any of the State Homes for soldiers and sailors or either now or hereafter duly established and maintained under State authority, such obsolete serviceable cannon, bronze or iron, suitable for firing salutes, as may be on hand undisposed of, not exceeding two to any one Home. *Act of February 8, 1889 (25 Stat. L., 657).*

---

[1] Section 4835, Revised Statutes, providing that the inmates of the "National Home for Disabled Volunteer Soldiers" shall be "subject to the Rules and Articles of War," *held* (1870) to be clearly an unconstitutional enactment, such inmates not being, any part of the armies of the United States, but *civilians*. The fact that they had once been members of the volunteer forces could not attach to them, after their final discharges, any amenability to the military jurisdiction. Dig. Opin., J. A. G., par. 2344. In re Kelly 71 Fed. Rep., 545.

Transportation at reduced rates.
Mar. 2, 1889, s. 2, v. 25, p. 855.

2336. Nothing in this act[1] shall be construed to prohibit any common carrier from giving reduced rates to ministers of religion; * * * or to inmates of the National Homes or State Homes for Disabled Volunteers and of Soldiers and Sailors' Orphan Homes, including those returning home after discharge, under arrangements with the Boards of Managers of said Homes. *Sec. 22, act of February 4, 1887 (25 Stat. L., 387), as amended by sec. 9, act of March 2, 1889 (25 Stat. L., 855).*

Documents to be furnished.
July 26, 1894, v. 28, p. 159.
State Homes, etc.
Laws, messages, and Record only to be sent.
Sec. 4837, R. S.

2337. The Secretary of the Senate and the Clerk of the House of Representatives shall cause to be sent to the National Home for Disabled Volunteer Soldiers at Dayton, Ohio, and to the Branches at Togus in Maine, Milwaukee in Wisconsin, Hampton in Virginia, Marion in Indiana, Leavenworth in Kansas, Santa Monica in California, and to the Homes for the widows and orphans of soldiers and sailors established and maintained by any State or Territory, and all Soldiers and Sailors' Homes established by the authority of any State or Territory receiving aid from the United States under legislation of Congress, each, one copy each of the following documents: The session laws of Congress; the annual messages of the President, with accompanying documents in the abridgment thereof; the daily Congressional Record; and the Public Printer is hereby authorized and directed to furnish to the Secretary of the Senate and the Clerk of the House of Representatives the documents referred to in this section.[2] *Act of July 26, 1894 (28 Stat. L., 159).*

Mail matter to be sent free.
V. 19, p. 335.
Aug. 18, 1894, v. 28, p. 412.

2338. The provisions of the fifth and sixth sections of the act entitled "An act establishing post routes, and for other purposes, approved March third, eighteen hundred and seventy-seven," for the transmission of official mail matter, be, and they are hereby, extended and made applicable to all official mail matter of the National Home for Disabled Volunteer Soldiers. *Act of August 18, 1894 (28 Stat. L., 412).*

Recession of jurisdiction.
Mar. 3, 1901, v. 31, p. 1175.

2339. The jurisdiction over the places purchased and used for the location of the Branches of the National Home for Disabled Volunteer Soldiers, under and by the authority of an act of Congress approved March twenty-first, eighteen hundred and sixty-six, in Milwaukee

---

[1] The interstate-commerce act of February 4, 1887 (25 Stat. L., 387), as amended by the act of March 2, 1889 (25 Stat. L., 855).

[2] This enactment replaces corresponding provisions contained in section 4837, Rev. Stat., and in the act of February 5, 1881 (21 Stat. L., 322).

County, State of Wisconsin, and upon which said Branch Home is located, and by authority of an act of Congress approved July fifth, eighteen hundred and eighty-eight, in the county of Leavenworth, State of Kansas, and upon which said Branch Home is located, is hereby ceded to the respective States in which said Branches are located and relinquished by the United States, and the United States shall claim or exercise no jurisdiction over said places after the passage of this act: *Provided*, That nothing contained herein shall be construed to impair the powers or rights heretofore conferred upon or exercised by the Board of Managers of the National Home for Disabled Volunteer Soldiers in and on said places. *Act of March 3, 1901 (31 Stat. L., 1175).*

CHAPTER XLIII.

THE GOVERNMENT HOSPITAL FOR THE INSANE.

Par.
2340, 2341. Establishment and supervision.
2342. Superintendent; duties.
2343. The same, funds of inmates.
2344. 2345. Admissions, discharges.
Par.
2346. Disbursement of appropriations.
2347. Pensions to inmates.
2348. Treatment of the insane of the Army in asylums in California.

ESTABLISHMENT AND SUPERVISION.

Establishment of the Government Hospital for the Insane.
Mar. 3, 1855, c. 199, s. 1, v. 10, p. 682.
Sec. 4838, R.S.

2340. There shall be in the District of Columbia a Government Hospital for the Insane, and its objects shall be the most humane care and enlightened curative treatment of the insane of the Army and Navy of the United States and of the District of Columbia.

Supervision.
Mar. 3, 1881, v. 21, p. 458.

2341. The supervision heretofore exercised by the Secretary of the Interior over the Government Hospital for the Insane shall be continued, and the officers of said hospital shall report to him as heretofore, anything in this act to the contrary notwithstanding. *Act of March 3, 1881 (21 Stat. L., 458).*

SUPERINTENDENT.

The superintendent.
Sec. 3, *ibid.*
Mar. 3, 1881, v. 21, p. 414.
Sec. 4839, R.S.

2342. The chief executive officer of the Hospital for the Insane shall be a superintendent, who shall be appointed by the Secretary of the Interior, and shall be entitled to a salary of four thousand dollars a year, and shall give bond for the faithful performance of his duties, in such sum and with such securities as may be required by the Secretary of the Interior. The superintendent shall be a well-educated physician, possessing competent experience in the care and treatment of the insane; he shall reside on the premises, and devote his whole time to the welfare of the institution; he shall, subject to the approval of the visitors, engage and discharge all needful and useful employees in the care of the insane, and all laborers on the farm, and determine their wages and duties; he shall be the responsible disbursing agent of the institution, and shall be ex-officio secretary of the board of visitors.

Funds of inmates.
July 1, 1898, v. 30, p. 623.

2343. The superintendent of the Government Hospital for the Insane shall deposit in the Treasury of the United States, in his name as agent, all funds now in his hands or which may hereafter be intrusted to him by or for the use of patients, which shall be kept as a separate account; and he is hereby authorized to draw therefrom on his order, from time to time, under such regulations as the Secretary of the Interior may prescribe, for the use of such patients, but not to exceed for any one patient the amount intrusted to the superintendent on account of such patient; and he shall give a separate bond, satisfactory to the said Secretary, for the faithful performance of his duties in respect to these funds as herein provided. *Act of July 1, 1898 (30 Stat. L., 623).*

ADMISSIONS.

Admission of insane persons of the Army, Navy, Marine Corps, etc.
June 15, 1860, c. 66, s. 1, v. 12, p. 23; July 13, 1866, c. 179, ss. 1, 2, v. 14, pp. 93, 94; Mar. 3, 1875, c. 156, s. 5, v. 18, p. 486.
Sec. 4843, R.S.

2344. The superintendent, upon the order of the Secretary of War, of the Secretary of the Navy, and of the Secretary of the Treasury, respectively, shall receive, and keep in custody until they are cured, or removed by the same authority which ordered their reception, insane persons of the following descriptions:

First. Insane persons belonging to the Army, Navy, Marine Corps, and Revenue-Cutter Service.

Second. Civilians employed in the Quartermaster's, Pay, and Subsistence Departments of the Army who may be, or may hereafter become, insane while in such employment. *Act of February 9, 1900 (31 Stat. L., 7).*

Third. Men who, while in the service of the United States, in the Army, Navy, or Marine Corps, have been admitted to the hospital, and have been thereafter discharged from it on the supposition that they have recovered their reason, and have, within three years after such discharge, become again insane from causes existing at the time of such discharge, and have no adequate means of support.

Fourth. Indigent insane persons who have been in either of the said services and been discharged therefrom on account of disability arising from such insanity.

Fifth. Indigent insane persons who have become insane within three years after their discharge from such service, from causes which arose during and were produced by said service.[1]

Discharge of patients upon bond.
Sec. 9, *ibid.*
Sec. 4856, R.S.

2345. If any person will give bond with sufficient security, to be approved by the supreme court of the District of Columbia, or by any judge thereof in vacation payable to the United States, with condition to restrain and take care of any independent or indigent insane person not charged with a breach of the peace, whether in the hospital or not, until the insane person is restored to sanity, such court or judge thereof may deliver such insane person to the party giving such bond.

Disbursement of appropriations for the insane.
Mar. 3, 1855, c. 199, s. 7, v. 10, p. 683.
Sec. 4858, R.S.

2346. All appropriations of money by Congress for the support of the Hospital for the Insane shall be drawn from the Treasury on the requisition of the Secretary of the Interior, and shall be disbursed and accounted for in all respects according to the laws regulating ordinary disbursements of public money.[2]

Payment of pensions to inmates.
Aug. 7, 1882, v. 22, p. 330.

2347. If any inmate of the Government Hospital for the Insane so admitted[3] from said National Home is or thereafter becomes a pensioner, and has neither wife, minor child, nor parent dependent on him, in whole or in part, for support, his arrears of pension and his pension money accruing during the period he shall remain in said hospital shall be applied to his support in said hospital and be paid over to the proper officer of said institution for the general uses thereof. *Act of August 7, 1882 (22 Stat. L., 330).*

Treatment of insane of the Army in California.
Mar. 3, 1901, v. 31, p. 1163.

2348. The Secretary of War may, in his discretion, contract for the care, maintenance, and treatment of the insane of the Army, and inmates of the National Home for Disabled Volunteer Soldiers on the Pacific coast at any State asylum in California, in all cases which he is now authorized by law to cause to be sent to the Government Hospital for the Insane in the District of Columbia. *Act of March 3, 1901 (31 Stat. L.,* 1163).

---

[1] The right to admission to the asylum has been extended by statute to include the following classes of cases:

(1) To insane convicts serving sentences of confinement imposed by United States courts. Act of June 23, 1874 (18 Stat. L., 251).

(2) To persons in custody charged with crime against the United States. Act of August 7, 1882 (22 Stat. L., 202).

(3) To inmates of the several branches of the National Home for Disabled Volunteer Soldiers who may become insane. Act of August 7, 1882 (22 Stat. L., 302).

(4) To inmates of the Soldiers' Home who may become insane. Act of July 7, 1884 (23 Stat. L., 194). The expense of maintenance to be paid from the Soldiers' Home fund.

[2] The act of March 3, 1881 (21 Stat. L., 458), vests the supervision of the asylum and the control over its management in the Secretary of the Interior.

[3] In accordance with the act of August 7, 1882. See note 1, *ante.*

CHAPTER XLIV.

NATIONAL PARKS.

Par.
2349–2354. National Military Parks.
2355–2382. The Chickamauga and Chattanooga National Military Park.
2378–2394. The Gettysburg National Park.
2395–2405. The Shiloh National Military Park.

Par.
2406–2413. The Vicksburg National Military Park.
2414–2421. The Antietam Battlefield.
2422–2446. The Yellowstone National Park.

NATIONAL MILITARY PARKS.

Par.
2349. Use for maneuvers.
2350–2351. The same, regulations.
2352. Injuries to monuments, trees, etc.

Par.
2353. Trespass, hunting, shooting, etc.
2354. Superintendent may make arrests.
2355. Ejectment from purchased lands.

Use of national military parks for maneuvers. May 15, 1896, v. 29, p. 120.

2349. In order to obtain practical benefits of great value to the country from the establishment of national military parks, said parks and their approaches are hereby declared to be national fields for military maneuvers for the Regular Army of the United States and the National Guard or Militia of the States: *Provided*, That the said parks shall be opened for such purposes only in the discretion of the Secretary of War, and under such regulations as he may prescribe.[1] *Act of May 15, 1896* (*29 Stat. L., 120*).

---

[1] Section 35 of the act of February 2, 1901 (31 Stat. L., 757), contained a provision that "the Secretary of War be, and he is hereby, authorized and directed to cause preliminary examinations and surveys to be made for the purpose of selecting four sites with a view to the establishment of permanent camp grounds for instruction of troops of the Regular Army and National Guard, with estimates of the cost of the sites and their equipment with all modern appliances, and for this purpose is authorized to detail such officers of the Army as may be necessary to carry on the preliminary work; and the sum of ten thousand dollars is hereby appropriated for the necessary expense of such work, to be disbursed under the direction of the Secretary of War: *Provided*, That the Secretary of War shall report to Congress the result of such examination and surveys; and no contract for said sites shall be made nor any obligations incurred until Congress shall approve such selections and appropriate the money therefor."

Secretary of War to designate forces to be instructed. Sec. 2, *ibid.*

2350. The Secretary of War is hereby authorized, within the limits of appropriations which may from time to time be available for such purpose, to assemble, at his discretion, in camp at such season of the year and for such period as he may designate, at such field of military maneuvers, such portions of the military forces of the United States as he may think best, to receive military instruction there. *Sec. 2, ibid.*

Secretary of War to make regulations. Sec. 2, *ibid.*

2351. The Secretary of War is further authorized to make and publish regulations governing the assembling of the National Guard or Militia of the several States upon the maneuvering grounds, and he may detail instructors from the Regular Army for such forces during their exercises. *Sec. 2, ibid.*

PROTECTION OF MILITARY PARKS.

Injuries to monuments, trees, etc. Mar. 3, 1897, v. 29, p. 621.

2352. Every person who willfully destroys, mutilates, defaces, injures, or removes any monument, statue, marker, guidepost, or other structure, or who willfully destroys, cuts, breaks, injures, or removes any tree, shrub, or plant within the limits of any National Parks, shall be deemed guilty of a misdemeanor, punishable by a fine of not less than ten dollars nor more than one thousand dollars for each monument, statue, marker, guidepost, or other structure, tree, shrub, or plant destroyed, defaced, injured, cut, or removed, or by imprisonment for not less than fifteen days and not more than one year, or by both fine and imprisonment. *Act of March 3, 1897 (29 Stat. L., 621.)*

Trespassing, hunting, shooting, etc. Sec. 2, *ibid.*

2353. Every person who shall trespass upon any National Parks for the purpose of hunting or shooting, or who shall hunt any kind of game thereon with gun or dog, or shall set trap or net or other device whatsoever thereon for the purpose of hunting or catching game of any kind, shall be guilty of a misdemeanor, punishable by a fine of not more than one thousand dollars or by imprisonment for not less than five days or more than thirty days, or by both fine and imprisonment. *Sec. 2, ibid.*

Superintendents may make arrests. Sec. 3, *ibid.*

2354. The superintendent or any guardian of such park is authorized to arrest forthwith any person engaged or who may have been engaged in committing any misdemeanor named in this act, and shall bring such person before any United States commissioner or judge of any district or circuit court of the United States within either of the districts within which the park is situated, and in the district within which the misdemeanor has been committed.

for the purpose of holding him to answer for such misdemeanor, and then and there shall make complaint in due form.[1] *Sec. 3, ibid.*

Ejectment from purchased land. Sec. 4, *ibid.*

2355. Any person to whom land lying within any National Parks may have been leased, who refuses to give up possession of the same to the United States after the termination of the said lease, and after possession has been demanded for the United States by any Park Commissioner or the Park Superintendent, or any person retaining possession of land lying within the boundary of said park which he or she may have sold to the United States for park purposes and have received payment therefor, after possession of the same has been demanded for the United States by any Park Commissioner or the Park Superintendent, shall be deemed guilty of trespass, and the United States may maintain an action for the recovery of the possession of the premises so withheld in the courts of the United States, according to the statutes or code of practice of the State in which the park may be situated.[2] *Sec. 4, ibid.*

CHICKAMAUGA AND CHATTANOOGA NATIONAL MILITARY PARK.

Par.
2356. Extent.
2357. Designation, acquisition of lands.
2358. Supervision of Secretary of War.
2359. Agreements with land owners.
2360. Commissioners, appointment.
2361. The same, duties.
2362. Location of troops.
2363. Care of park.
2364. Appropriation for preliminary work.
2365. Reduction of area.

Par.
2366, 2367, 2368. Purchases.
2369. State monuments.
2370. Erection of monuments, restriction.
2371. The same, construction.
2372. The same, location.
2373. Leases.
2374. Donations of land for roads.
2375. Donations of cannon, balls, etc.
2376. Injuries to monuments, trees, etc.
2377. Right of way to Chattanooga Rapid Transit Railroad.

Chickamauga and Chattanooga National Military Park established. Purpose. Conditions. Jurisdiction.

2356. For the purpose of preserving and suitably marking for historical and professional military study the fields of some of the most remarkable maneuvers and most brilliant fighting in the war of the rebellion, and upon the ceding of jurisdiction to the United States by the States of Tennessee and Georgia, respectively, and the report of

---

[1] For other statutes respecting the punishment of offenses committed in National Military Parks see section 10, act of August 19, 1890 (26 Stat. L., 333); section 7, act of February 11, 1895 (28 ibid., 651); section 7, act of December 27, 1894 (ibid., 945); section 7, act of February 21, 1899 (30 ibid., 84).

[2] For other enactments authorizing leases of land included within the limits of National Military Parks, see the act of August 5, 1890 (26 Stat. L., 333); August 5, 1892 (27 ibid., 376); section 3, act of December 27, 1894 (28 ibid., 597); June 4, 1897 (30 ibid., 44); and February 21, 1899 (30 ibid., 84).

Highways declared approaches to and parts of park.
Aug. 19, 1890, v. 26, p. 333.

the Attorney-General of the United States that the title to the lands thus ceded is perfect, the following described highways in those States are hereby declared to be approaches to and parts of the Chickamauga and Chattanooga National Military Park as established by the second section of this act, to wit: First. The Missionary Ridge Crest road from Sherman Heights at the north end of Missionary Ridge, in Tennessee, where the said road enters upon the ground occupied by the Army of the Tennessee under Major-General William T. Sherman, in the military operations of November twenty-fourth and twenty-fifth, eighteen hundred and sixty-three; thence along said road through the positions occupied by the army of General Braxton Bragg on November twenty-fifth, eighteen hundred and sixty-three, and which were assaulted by the Army of the Cumberland under Major-General George H. Thomas on that date, to where the said road crosses the southern boundary of the State of Tennessee, near Rossville Gap, Georgia, upon the ground occupied by the troops of Major-General Joseph Hooker, from the Army of the Potomac, and thence in the State of Georgia to the junction of said road with the Chattanooga and Lafayette or State road at Rossville Gap; second, the Lafayette or State road from Rossville, Georgia, to Lee and Gordon's Mills, Georgia; third, the road from Lee and Gordon's Mills, Georgia, to Crawfish Springs, Georgia; fourth, the road from Crawfish Springs, Georgia, to the crossing of the Chickamauga at Glass' Mills, Georgia; fifth, the Dry Valley road from Rossville, Georgia, to the southern limits of McFarland's Gap in Missionary Ridge; sixth, the Dry Valley and Crawfish Springs road from McFarland's Gap to the intersection of the road from Crawfish Springs to Lee and Gordon's Mills; seventh, the road from Ringold, Georgia, to Reed's Bridge on the Chickamauga River; eighth, the roads from the crossing of Lookout Creek across the northern slope of Lookout Mountain and thence to the old Summertown Road and to the valley on the east slope of the said mountain, and thence by the route of General Joseph Hooker's troops to Rossville, Georgia, and each and all of these herein described roads shall, after the passage of this act, remain open as free public highways, and all rights of way now existing through the grounds of the said park and its approaches shall be continued. *Act of August 19, 1890 (26 Stat. L., 333).*

Rights of way.

2357. Upon the ceding of jurisdiction by the legislature of the State of Georgia, and the report of the Attorney-General of the United States that a perfect title has been secured under the provisions of the act approved August first, eighteen hundred and eighty-eight, entitled "An act to authorize condemnation of land for sites for public buildings, and for other purposes," the lands and roads embraced in the area bounded as herein described, together with the roads described in section one of this act, are hereby declared to be a national park, to be known as the Chickamauga and Chattanooga National Park; that is to say, the area inclosed by a line beginning on the Lafayette or State road, in Georgia, at a point where the bottom of the ravine next north of the house known on the field of Chickamauga as the Cloud House, and being about six hundred yards north of said house, due east to the Chickamauga River and due west to the intersection of the Dry Valley road at McFarland's Gap; thence along the west side of the Dry Valley and Crawfish Springs roads to the south side of the road from Crawfish Springs to Lee and Gordon's Mills; thence along the south side of the last-named road to Lee and Gordon's Mills; thence along the channel of the Chickamauga River to the line forming the northern boundary of the park as hereinbefore described, containing seven thousand six hundred acres, more or less. *Sec. 2, ibid.*

Condemnation of lands and roads.
Sec. 2, *ibid.*

Name, etc.

2358. The said Chickamauga and Chattanooga National Park, and the approaches thereto, shall be under the control of the Secretary of War, and it shall be his duty, immediately after the passage of this act, to notify the Attorney-General of the purpose of the United States to acquire title to the roads and lands described in the previous sections of this act under the provisions of the act of August first, eighteen hundred and eighty-eight; and the said Secretary, upon receiving notice from the Attorney-General of the United States that perfect titles have been secured to the said lands and roads, shall at once proceed to establish and substantially mark the boundaries of the said park. *Sec. 3, ibid.*

Park and approaches to be under control of Secretary of War.

Proceedings in condemnation.
Sec. 3, *ibid.*

2359. The Secretary of War is hereby authorized to enter into agreements, upon such nominal terms as he may prescribe, with such present owners of the land as may desire to remain upon it, to occupy and cultivate their present holdings, upon condition that they will preserve the present buildings and roads, and the present

Agreements with present land owners to remain, etc.
Sec. 4, *ibid.*

Conditions of occupancy.

outlines of field and forest, and that they will only cut trees or underbrush under such regulations as the Secretary may prescribe, and that they will assist in caring for and protecting all tablets, monuments, or such other artificial works as may from time to time be erected by proper authority. *Sec. 4, ibid.*

COMMISSIONERS.

Park commissioners. Sec. 5, *ibid.*

2360. The affairs of the Chickamauga and Chattanooga National Park shall, subject to the supervision and direction of the Secretary of War, be in charge of three commissioners, each of whom shall have actively participated in the battle of Chickamauga or one of the battles about Chattanooga, two to be appointed from civil life by the Secretary of War, and a third, who shall be detailed by the Secretary of War from among those officers of the Army best acquainted with the details of the battles of Chickamauga and Chattanooga, who shall act as secretary of the commission. The said commissioners and secretary shall have an office in the War Department building, and while on actual duty shall be paid such compensation, out of the appropriation provided in this act, as the Secretary of War shall deem reasonable and just. *Sec. 5, ibid.*

Secretary of commission.

Office.

Duties of commission. Sec. 6, *ibid.*

2361. It shall be the duty of the commissioners named in the preceding section, under the direction of the Secretary of War, to superintend the opening of such roads as may be necessary to the purposes of the park, and the repair of the roads of the same, and to ascertain and definitely mark the lines of battle of all troops engaged in the battles of Chickamauga and Chattanooga, so far as the same shall fall within the lines of the park as defined in the previous sections of this act, and, for the purpose of assisting them in their duties and in ascertaining these lines, the Secretary of War shall have authority to employ, at such compensation as he may deem reasonable and just, to be paid out of the appropriation made by this act, some person recognized as well informed in regard to the details of the battles of Chickamauga and Chattanooga, and who shall have actively participated in one of those battles, and it shall be the duty of the Secretary of War from and after the passage of this act, through the commissioners, and their assistant in historical work, and under the act approved August first, eighteen hundred and eighty-eight, regulating the condemnation of land for public uses, to proceed with the preliminary work of establishing the park

Employment of historical assistant. v. 25, p. 357.

and its approaches as the same are defined in this act, and the expenses thus incurred shall be paid out of the appropriation provided by this act.[1] *Sec. 6, ibid.*

Location of regular troops. Sec. 7, *ibid.*

2362. It shall be the duty of the commissioners, acting under the direction of the Secretary of War, to ascertain and substantially mark the locations of the regular troops, both infantry and artillery, within the boundaries of the park, and to erect monuments upon those positions as Congress may provide the necessary appropriations; and the Secretary of War in the same way may ascertain and mark all lines of battle within the boundaries of the park and erect plain and substantial historical tablets at such points in the vicinity of the park and its approaches as he may deem fitting and necessary to clearly designate positions and movements, which, although without the limits of the park, were directly connected with the battles of Chickamauga and Chattanooga. *Sec. 7, ibid.*

Lines of battle.

Erection of historical tablets.

STATE MONUMENTS.

Care of park etc. Sec. 9, *ibid.*

Regulations, etc.

2363. The Secretary of War, subject to the approval of the President of the United States, shall have the power to make, and shall make, all needed regulations for the care of the park and for the establishment and marking of the lines of battle and other historical features of the park. *Sec. 9, ibid.*

MISCELLANEOUS PROVISIONS.

Appropriation for preliminary work and pay, etc., of commission, etc. Sec. 11, *ibid.*

2364. To enable the Secretary of War to begin to carry out the purposes of this act, including the condemnation and purchase of the necessary land, marking the boundaries of the park, opening or repairing necessary roads, maps, and surveys, and the pay and expenses of the commissioners and their assistant, the sum of one hundred and twenty-five thousand dollars, or such portion thereof as may be necessary, is hereby appropriated out of any moneys in the Treasury not otherwise appropriated, and disbursements under this act shall require the approval of the Secretary of War, and he shall make annual report of the same to Congress.[2] *Sec. 11, act of August 19, 1900 (26 Stat. L., 336).*

---

[1] All vouchers in support of disbursements under the act of August 19, 1890 (26 Stat. L., 333), providing for the Chickamauga and Chattanooga National Military Park, and the acts supplementary thereto, require the approval of the Secretary of War. II Compt. Dec., 331.

[2] The act of Congress of August 19, 1890, vested in the Secretary of War a simple authority to purchase land for the purposes of the Chickamauga and Chattanooga National Park, without direction or indication as to the terms of such purchase. Deeds

Reduced area. Mar. 3, 1891, v. 26, p. 978.

2365. The Secretary of War, upon the recommendation of the Chickamauga Park Commissioners, may confine the limits of the park to such reduced area, within the bounds fixed by the said act, as may be sufficient for the purposes of the said act, and the acquisition of title by the United States to such reduced area shall be held to be a compliance with the terms of said act, and such title shall be procured by the Secretary of War and under his direction in accordance with the methods prescribed in sections four, five, and six of the act approved February twenty-second, eighteen hundred and sixty-seven, entitled "An act to establish and protect national cemeteries," which procurement of title shall be held to be a compliance with the act establishing the said park, and the Secretary of War shall proceed with the establishment of the park as rapidly as jurisdiction over the roads of the park and its approaches and title to the separate parcels of land which compose it may be obtained from the United States. *Act of March 3, 1891 (26 Stat. L., 978).*

Purchases. Aug. 5, 1892, v. 27, p. 376.

2366. To enable the Secretary of War to complete the establishment of the Chickamauga and Chattanooga National Military Park according to the terms of existing laws, including surveys, maps, models in relief, the purchase of Orchard Knob and Sherman's Earthworks, and for observation towers and the purchase of sites for two of them, one hundred and fifty thousand dollars. *Act of August 5, 1892 (27 Stat. L., 376).*

The same. Mar. 3, 1893, v. 27, p. 376.

2367. To enable the Secretary of War to complete the establishment of the Chickamauga and Chattanooga National Military Park, according to the terms of existing laws, including the construction of roads, surveys, maps, iron gun carriages, administration building, the purchase of land within the legal area of the park and the north point of Lookout Mountain,[1] and for widening roads, for bronze historical tablets, repairs to bridges, one observation tower

---

were offered by its owners containing two conditions—first, a condition subsequent to the effect that unless certain improvements should be made the grant should become null and void; second, a proviso that in case the United States should at any future time condemn other land of the grantor, he should then be paid for the same an amount to be measured by the value, determined by appraisement, of the lands conveyed by the present deed, an arrangement which would be equivalent to giving him a claim on the United States for an unliquidated amount. *Held*, that such conditional conveyances could not legally be accepted by the Secretary of War, no authority being given him by the statute to bind the Government by conditions or stipulations in regard to the title or purchase. Dig. Opin. J. A. G., par. 2304.

[1] The act of July 1, 1890 (30 Stat. L., 629), contains provision for the completion of this purchase.

on Orchard Knob;[1] * * * in all, one hundred thousand dollars. *Act of March 3, 1893 (27 Stat. L., 376).*

The same. Aug. 18, 1894, v. 28, p. 403.

2368. To * * * complete the establishment of the park, * * * including road construction, * * * foundations for State monuments, the purchase of the north end of Missionary Ridge, and monument sites in the vicinity of Glass's Mill, * * * in all, seventy-five thousand dollars. *Act of August 18, 1894 (28 Stat. L., 403).*

The same. Mar. 2, 1895, v. 28, p. 945.

2369. To * * * complete the establishment of the * * * park, * * * including road work, memorial gateway and designs therefor, * * * land the purchase of which has heretofore been authorized by law, sites for monuments in Lookout Valley, not to exceed three hundred dollars in all; in all, seventy-five thousand dollars.[2] *Act of March 2, 1895 (28 Stat. L., 945).*

STATE MONUMENTS.

Certain States, etc., may ascertain and mark lines of battle, etc. Aug. 19, 1890, s. 8, v. 26, p. 333.

2370. It shall be lawful for the authorities of any State having troops engaged either at Chattanooga or Chickamauga, and for the officers and directors of the Chickamauga Memorial Association, a corporation chartered under the laws of Georgia, to enter upon the lands and approaches of the Chickamauga and Chattanooga National Park for the purpose of ascertaining and marking the lines of battle of troops engaged therein: *Provided*, That before any such lines are permanently designated the position of the lines and the proposed methods of marking them by monuments, tablets, or otherwise shall be submitted to the Secretary of War, and shall first receive the written approval of the Secretary, which approval shall be based upon formal written reports, which must be made to him in each case by the commissioners of the park. *Sec. 8, act of August 19, 1890 (26 Stat. L., 333).*

Secretary of War to first approve lines, etc.

Erection of monuments. J. R. 8, Oct. 2, 1893, v. 28, p. 12.

2371. The said Board of Commissioners heretofore appointed pursuant to the statute creating said park is hereby empowered to authorize the boards or representatives of the several States building monuments upon said

---

[1] The term "or other public building of any kind whatever," used in sec. 355, Rev. Sts., *held* to include the "observation towers," for the erection of which in the Chickamauga and Chattanooga National Park appropriations were made in the acts of August 5, 1892, and March 3, 1893. Consent by the legislature of the State to the purchase of the land by the United States is therefore requisite before the appropriation can legally be expended. Dig. Opin. J. A. G., par. 681.

[2] The act of February 26, 1896 (29 Stat. L., 21), makes the unexpended balance of the appropriation for dedication ceremonies available for the current work of establishment.

Use of material for State monuments authorized.

battlefield to take and use, under such rules and regulations and upon such terms as said National Commission may direct, such stone and other material, including sand and gravel, as may be necessary to construct the foundation for any such monuments, and which may be found within the territory of said National Park, and the roads and highways leading thereto.[1] *Joint resolution No. 8, October 2, 1893 (28 Stat. L., 12).*

Restriction on erection of monuments.
Feb. 26, 1896, v. 29, p. 21.

2372. No monuments or memorials shall be erected upon any lands of the park, or remain upon any lands which may be purchased for the park, except upon ground actually occupied in the course of the battle by troops of the State which the proposed monuments are intended to commemorate, except upon those sections of the park set apart for memorials to troops which were engaged in the campaigns, but operated outside of the legal limits of the park; and the regulations of the commissioners of the park, as approved by the Secretary of War, promulgated December fourteenth, eighteen hundred and ninety-five, are hereby affirmed.[1] *Act of February 26, 1896 (29 Stat. L., 21).*

Location of State monuments.
June 4, 1897, v. 30, p. 43.

2373. State memorials shall be placed on brigade lines of battle under the direction of the Park Commission. *Act of June 4, 1897 (30 Stat. L., 43).*

LEASES.

Leases.
Aug. 5, 1892, v. 27, p. 376.

2374. The Secretary of War may lease the lands of the park at his discretion, either to former owners or other persons, for agricultural purposes, the proceeds to be applied by the Secretary of War to the repairs of roads and the care of the park; and from this appropriation the Secretary of War is authorized to pay the disbursing officer of the War Department the sum of five hundred dollars for disbursing this and former appropriations for said park.[2] *Act of August 5, 1892 (27 Stat. L., 376).*

DONATIONS.

Donations of land for roads.
Mar. 3, 1893, v. 27, p. 599.

2375. The Secretary of War is hereby authorized to accept on behalf of the United States donations of land for road purposes. *Act of March 3, 1893 (27 Stat. L., 599).*

Donations of cannon, etc.
Aug. 5, 1892, v. 27, p. 376.

2376. The Secretary of War and the Secretary of the Navy are hereby authorized to deliver to the Commissioners of the Chickamauga and Chattanooga National Military Park, at the park, such number of condemned cannon and cannon balls as their judgment may approve, for the purpose of their work of indication and marking location on the battlefields of Chickmauga, Missionary Ridge, and Lookout Mountain. *Act of August 5, 1892 (27 Stat. L., 376).*

---

[1] See also paragraph 2363, *ante.*

[2] See also section 4, act of August 19, 1890 (26 Stat. L., 333), paragraph 2359. *ante.*

INJURIES TO MONUMENTS, TREES, ETC.

Punishment for injury, etc., to monuments, etc.
Sec. 10, *ibid.*

2377. If any person shall willfully destroy, mutilate, deface, injure, or remove any monument, column, statues, memorial structure, or work of art that shall be erected or placed upon the grounds of the park by lawful authority, or shall willfully destroy or remove any fence, railing, inclosure, or other work for the protection or ornament of said park, or any portion thereof, or shall willfully destroy, cut, hack, bark, break down, or otherwise injure any tree, bush, or shrubbery that may be growing upon said park, or shall cut down or fell or remove any timber, battle relic, tree or trees growing or being upon such park, except by permission of the Secretary of War, or shall willfully remove or destroy any breast-works, earth-works, walls, or other defenses or shelter, or any part thereof, constructed by the armies formerly engaged in the battles on the lands or approaches to the park, any person so offending and found guilty thereof, before any justice of the peace of the county in which the offense may be committed, shall for each and every such offense forfeit and pay a fine, in the discretion of the justice, according to the aggravation of the offense, of not less than five nor more than fifty dollars, one-half to the use of the park and the other half to the informer, to be enforced and recovered, before such justice, in like manner as debts of like nature are now by law recoverable in the several counties where the offense may be committed.[1] *Sec. 10, ibid.*

RIGHT OF WAY TO CHATTANOOGA RAPID TRANSIT COMPANY.

Right of way.
May 7, 1898, v. 30, p. 399.

2378. The Secretary of War is hereby authorized, at his discretion, and upon the favorable recommendation of the Chickamauga and Chattanooga National Park Commission, to grant a right of way to the Chattanooga Rapid Transit Company to lay a single track across the Dry Valley road at such point or place thereon as said commission may determine upon; and also, upon like recommendation of said commission, may grant such other concessions as may be necessary to permit the said Chattanooga Rapid Transit Company to extend its lines to the Chickamauga and Chattanooga National Park: *Provided*, That such grant or grants shall only become or be operative on the condition that the track and tracks and roadbed of said company, and the right of way for any and all extensions of its road to said park from the point of crossing said Dry Valley road shall first be definitely fixed and located upon a line or lines which shall be satisfactory to and approved by said commission; and no part of said line or lines of road, after being so located, established, built, or constructed, shall be changed, moved, or extended without the consent in writing of said commission thereto being first had and obtained, and upon the further condition that an agreement satisfactory to said commission and approved by it shall be entered into on the part of said company for the proper maintenance of the crossing of said Dry Valley road, and at all times keeping the same in proper repair and condition. *Act of May 7, 1898 (30 Stat. L., 399).*

---

[1] See for general provisions on this subject the act of March 3. 1897 (29 Stat. L., 621), par. 2352, *ante.*

THE GETTYSBURG NATIONAL PARK.

Par.
2379. Acquisition of lands.
2380. Designation.
2381. Commissioners, compensation, duties.
2382. Acquisition of additional lands.
2383. The same, condemnation.
2384. Appropriations, disbursements.
2385. Monuments and tablets, avenues.
2386. Continuing surveys.
Par.
2387. Roads.
2388. Specimens of arms, uniforms, etc.
2389. Condemnation of lands.
2390. Leases.
2391, 2392, 2393. Erection of monuments. Lincoln's Gettysburg address.
2394. Injuries to monuments, trees, etc.
2395. Regulations.

Gettysburg National Park.
Acceptance of land from Battlefield Memorial Association.
Feb. 11, 1895, v. 28, p. 651.

2379. The Secretary of War is hereby authorized to receive from the Gettysburg Battlefield Memorial Association, a corporation chartered by the State of Pennsylvania, a deed of conveyance to the United States of all the lands belonging to said association, embracing about eight hundred acres, more or less, and being a considerable part of the battlefield of Gettysburg, together with all rights of way over avenues through said lands acquired by said association, and all improvements made by it in and upon the same. Upon the due execution and delivery to the Secretary of War of such deed of conveyance the Secretary of War is authorized to pay to the said Battlefield Memorial Association the sum of two thousand dollars, or so much thereof as may be necessary to discharge the debts of said association, the amount of such debts to be verified by the officers thereof, and the sum of two thousand dollars is hereby appropriated out of any money in the Treasury not otherwise appropriated to meet and defray such charges. *Act of February 11, 1895 (28 Stat. L., 651).*

Designation. Sec. 2, *ibid.*

2380. As soon as the lands aforesaid shall be conveyed to the United States the Secretary of War shall take possession of the same, and such other lands on the battlefield as the United States have acquired, or shall hereafter acquire, by purchase or condemnation proceedings; and the lands aforesaid shall be designated and known as the "Gettysburg National Park."[1] *Sec. 2, ibid.*

COMMISSIONERS.

Commissioners. Sec. 3, *ibid.*

Compensation.

Duty.

2381. The Gettysburg national park shall, subject to the supervision and direction of the Secretary of War, be in charge of the commissioners heretofore appointed by the Secretary of War for the location and acquisition of lands at Gettysburg, and their successors; the said commissioners shall have their office at Gettysburg, and while on duty shall be paid such compensation out of the appropriation provided in this act as the Secretary of War shall deem reasonable and just. And it shall be the duty of the said commissioners, under the direction of the Secretary of War, to superintend the opening of such additional roads as may be necessary for the purposes of the park and for the improvement of the avenues heretofore laid out therein, and to properly mark the boundaries of the said park, and to ascertain and definitely mark the lines of battle of all troops engaged in the battle of Gettysburg, so far as the same shall fall within the limits of the park.[2] *Sec. 3, ibid.*

Acquiring additional land, etc. Sec. 4, *ibid.*

2382. The Secretary of War is hereby authorized and directed to acquire, at such times and in such manner as he may deem best calculated to serve the public interest, such lands in the vicinity of Gettysburg, Pennsylvania, not exceeding in area the parcels shown on the map prepared by Major-General Daniel E. Sickles, United States Army, and now on file in the office of the Secretary of War, which were occupied by the infantry, cavalry, and artillery on the first, second, and third days of July, eighteen hundred and sixty-three, and such other adjacent lands as he may deem necessary to preserve the important topographical features of the battlefield: *Provided*, That nothing contained in this act shall be deemed and held to prejudice the rights acquired by any State or by any military organization to the ground on which its monuments or markers are placed, nor the right of way to the same. *Sec. 4, ibid.*

---

[1] Where certain land, part of the battlefield of Gettysburg, was in danger of being so cut up and altered by the construction of an electric railroad as to cause the obliteration of important tactical positions occupied by the different commands engaged in the battle, *advised* that the Attorney-General be requested to have initiated the proper proceedings for the condemnation of the land so that the United States may acquire the fee, and for an injunction restraining the railroad company from constructing or operating its road upon the land pending the condemnation proceedings. Dig. Opin. J. A. G., par. 1561.

[2] Any act of Congress which plainly and directly tends to enhance the respect and love of the citizen for the institutions of his country and to quicken and strengthen his motives to defend them, and which is germane to and intimately connected with and appropriate to the exercise of some one or all of the powers granted by Congress, must be valid, and the proposed use in this case comes within such description. U. S. *v.* Gettysburg Electric Railway Co., 160 U. S., 668.

Commissioners to acquire lands designated. Sec. 5, *ibid.*

2383. For the purpose of acquiring the lands designated and described in the foregoing section not already acquired and owned by the United States, and such other adjacent land as may be deemed necessary by the Secretary of War for the preservation and marking of the lines of battle of the Union and Confederate armies at Gettysburg, the Secretary of War is authorized to employ the services of the commissioners heretofore appointed by him for the location, who shall proceed, in conformity with his instructions and subject in all things to his approval, to acquire such lands by purchase, or by condemnation proceedings, to be taken by the Attorney-General in behalf of the United States, in any case in which it shall be ascertained that the same can not be purchased at prices deemed reasonable and just by the said commissioners and approved by the Secretary of War. And such condemnation proceedings may be taken pursuant to the act of Congress approved August first, eighteen hundred and eighty-eight, regulating the condemnation of land for public uses, or the joint resolution authorizing the purchase or condemnation of land in the vicinity of Gettysburg, Pennsylvania, approved June fifth, eight hundred and ninety-four. *Sec. 5, ibid.*

Condemnation proceedings. Aug. 1, 1888, v. 25, p. 357.

Appropriation for expenses, etc. Sec. 9, *ibid.*

2384. To enable the Secretary of War to carry out the purposes of this act, including the purchase or condemnation of the land described in sections four and five of this act, opening, improving, and repairing necessary roads and avenues, providing surveys and maps, * * * seventy-five thousand dollars, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated; and all disbursements made under this act shall require the approval of the Secretary of War, who shall make annual report of the same to Congress. *Sec. 9; ibid.*

Monuments and tablets at Gettysburg, Pa.

Avenues, etc. Mar. 3, 1893, v. 27, p. 599.

2385. For the purpose of preserving the lines of battle at Gettysburg, Pennsylvania, and for properly marking with tablets the positions occupied by the various commands of the armies of the Potomac and of Northern Virginia on that field, and for opening and improving avenues along the positions occupied by troops upon those lines, and for fencing the same, and for determining the leading tactical positions of batteries, regiments, brigades, divisions, corps, and other organizations with reference to the study and correct understanding of the battle, and to mark the same with suitable tablets, each bearing a brief historical legend, compiled without praise and without censure, the sum of twenty-five thousand dollars, to be expended under the direction of the Secretary of War.[1] *Act of March 3, 1893 (27 Stat. L., 599).*

Continuing surveys, etc.

Aug. 18, 1894, v. 28, p. 405.

2386. For continuing the work of surveying, locating, and preserving the lines of battle at Gettysburg, Pennsylvania, and for purchasing, opening, constructing, and improving avenues along the portions occupied by the various commands of the armies of the Potomac and Northern Virginia on that field, and for fencing the same; and for the purchase, at private sale or by condemnation, of such parcels of land as the Secretary of War may deem necessary for the sites of tablets, and for the construction of the said avenues; for determining the leading tactical positions and properly marking the same with tablets of batteries, regiments, brigades, divisions, corps, and other organizations with reference to the study and correct understanding of the battle, each tablet bearing a brief historical legend, compiled without praise and without censure; fifty thousand dollars, to be expended under the direction of the Secretary of war.[2] *Act of August 18, 1894 (28 Stat. L., 405).*

---

[1] This statute was held to be constitutional and within the power of Congress by the decision of the Supreme Court of the United States in the case of the United States *v.* The Gettysburg Electric Railway Company (160 U. S., 668). But see U. S. *v.* Tract of Land, etc. (70 Fed. Rep., 940).

[2] The appropriations for the Gettysburg National Park, made in the acts of August 18, 1894, and February 11, 1895, to the extent that they provide for objects common to both, are cumulative, while each is available for certain objects not provided for in the other. (2 Compt. Dec., 59.)

The act of June 9, 1880 (21 Stat. L., 170), contained the following provision: "That the sum of fifty thousand dollars, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to complete the survey of the Gettysburg battlefield; also, to provide for the compilation

ROADS.

Roads, etc. June 10, 1896, v 29, p. 384.

2387. The Secretary of War is hereby authorized in his discretion to improve and maintain the public roads within the limits of the national park at Gettysburg, Pennsylvania, over which jurisdiction has been or may hereafter be ceded to the United States: *Provided*, That nothing contained in this act shall be deemed and held to prejudice the rights acquired by any State or by any military organization to the ground on which its monuments or markers are placed nor the right of way to the same. *Act of June 10, 1896 (29 Stat. L., 384).*

SPECIMENS OF ARMS, ETC.

Specimens of arms, etc., used in battle to be furnished. July 27, 1892, v. 27, p. 276.

2388. The Secretary of War is hereby authorized and directed to deliver to the Gettysburg Battlefield Memorial Association, at Gettysburg, Pennsylvania, specimens of the arms, equipments, projectiles, uniforms, and other material of war used by the armies in that battle (so far as may be practicable), for the purpose of exhibiting and preserving them for historical purposes in the museum at the house used by Major-General Meade for headquarters, now owned by the said association, or at such other place as the directors of the association may deem proper. And that the transportation to Gettysburg be furnished by the Quartermaster's Department of the United States from the appropriation for the transportation of army supplies. *Act of July 27, 1892 (27 Stat. L., 276).*

CONDEMNATION OF LANDS.

Acquisition and condemnation of lands. Joint Res. 30, June 5, 1894, v. 28, p. 584.

2389. The Secretary of War is authorized to acquire by purchase (or by condemnation), pursuant to the act of August one, eighteen hundred and eighty-eight,[1] such lands, or interests in lands, upon or in the vicinity of said battlefield, as, in the judgment of the Secretary of War, may be necessary for the complete execution of the act of

---

of all available data used in locating troops on the engineer maps of that battle; also, to provide diagrams showing the changing movements and positions during the engagement; the whole to be done by or under the direction of Mr. John B. Bachelder, author of the position plates of the Government maps of that battle, under the direction of the Secretary of War: *Provided*, That no part of said sum shall be disbursed by the Secretary of War except for work actually performed or for materials furnished for the objects heretofore named; and that all the maps, data, and materials prepared for, or used for, the work contemplated by this act shall be the property of the Government, to be deposited in the Department of War: *And provided further*, That the sum hereby appropriated shall be in full satisfaction for all work done and all material collected by the said John B. Bachelder."

[1] See also paragraph 2383, *ante*.

March three, eighteen hundred and ninety-three:[1] *Provided*, That no obligation or liability upon the part of the Government shall be incurred under this resolution nor any expenditure made except out of appropriations already made and to be made during the present session of Congress.[2] *Joint Resolution No. 30, June 5, 1894* (*28 Stat. L., 584*).

LEASES.

2390. The Secretary of War may lease the lands of the park, at his discretion, either to former owners or other persons, for agricultural purposes, the proceeds to be applied by the Secretary of War, through the proper disbursing officer, to the maintenance of the park. *Act of June 4, 1897* (*30 Stat. L., 44*).

Leases. June 4, 1897, v. 30, p. 44.

ERECTION OF MONUMENTS.

2391. For the erection of monuments or memorial tablets for the proper marking of the position of each of the commands of the Regular Army engaged at Gettysburg, fifteen thousand dollars, to be expended under the direction of the Secretary of War. *Act of March 3, 1887* (*24 Stat. L., 535*).

Monuments, etc., Gettysburg, Mar. 3, 1887, v. 24, p. 535.

2392. The appropriation of fifteen thousand dollars, made by the act approved March third, eighteen hundred and eighty-seven, for the erection of monuments or memorial tablets for the proper marking of the position of each of the commands of the Regular Army engaged at Gettysburg, be, and the same is hereby, made available for the purchase of land upon which to erect the monuments and tablets. *Act of October 2, 1888* (*25 Stat. L., 538*).

The same. Oct. 2, 1888, v. 25, p. 538.

2393. The Secretary of War is hereby authorized and directed to cause to be made a suitable bronze tablet, containing on it the address delivered by Abraham Lincoln, President of the United States, at Gettysburg, on the nineteenth day of November, eighteen hundred and sixty-three, on the occasion of the dedication of the national cemetery at that place, and such tablet, having on it besides the address a medallion likeness of President Lincoln, shall be erected on the most suitable site within the limits of said

Bronze tablet containing Lincoln's address, etc.

Feb. 11, 1895, s. 8, v. 28, p. 651.

Medallion.

---

[1] The requirement of the act of June 4, 1897, which authorizes the Secretary of War to lease the lands of the Gettysburg National Military Park for agricultural purposes that "the proceeds are to be applied * * * to the maintenance of the park," relates only to the proceeds of leases so made, and not to other proceeds of the lands. IV Compt. Dec., 343.

park, which said address was in the following words, to wit:

Inscription. "Four score and seven years ago our fathers brought forth on this continent a new nation, conceived in liberty and dedicated to the proposition that all men are created equal.

"Now we are engaged in a great civil war, testing whether that nation, or any nation so conceived and so dedicated, can long endure. We are met on a great battlefield of that war. We have come to dedicate a portion of that field as a final resting place for those who here gave their lives that that nation might live. It is altogether fitting and proper that we should do this.

"But, in a larger sense, we can not dedicate, we can not consecrate, we can not hallow this ground. The brave men, living and dead, who struggled here have consecrated it far above our poor power to add or detract. The world will little note, nor long remember, what we say here; but it can never forget what they did here. It is for us, the living, rather to be dedicated here to the unfinished work which they who fought here have thus far so nobly advanced. It is rather for us to be here dedicated to the great task remaining before us; that from these honored dead we take increased devotion to that cause for which they gave the last full measure of devotion; that we here highly resolve that these dead shall not have died in vain; that this nation, under God, shall have a new birth of freedom, and that government of the people, by the people, for the people, shall not perish from the earth."

And the sum of five thousand dollars, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to pay the cost of said tablet and medallion and pedestal. *Sec. 8, act of February 11, 1895 (28 Stat. L., 651).*

INJURIES TO MONUMENTS, TABLETS, ETC.

Penalty for destroying columns, etc. Feb. 11, 1895; s. 7, v. 28, p. 651.

2394. If any person shall destroy, mutilate, deface, injure, or remove, except by permission of the Secretary of War, any column, statue, memorial structure, or work of art that shall be erected or placed upon the grounds of the park by lawful authority, or shall destroy or remove any fence, railing, inclosure, or other work for the protection or ornament of said park or any portion thereof, or shall destroy, cut, hack, bark, break down, or otherwise injure any tree, bush, or shrubbery that may be growing upon said park, or shall cut down or fell or remove any timber, battle relic, tree or trees, growing or being upon said park, or hunt within the limits of the park, or shall remove or destroy any breastworks, earthworks, walls, or other defenses or shelter or any part thereof constructed by the armies formerly engaged in the battles on the land or approaches to the park, or shall violate any regulation made and published by the Secretary of War for the government of visitors within the limits of said park, any person so offending and found guilty thereof, before any justice of the peace of the county in which the offense may be committed, shall, for each and every such offense, forfeit and pay a fine, in the discretion of the justice, according to the aggravation of the offense, of not less than five nor more than five hundred dollars, one half for the use of the park and the other half to the informer, to be enforced and recovered before such justice in like manner as debts of like nature are now by law recoverable in the county where the offense may be committed.[1] *Sec. 7, act of February 11, 1895 (28 Stat. L., 651).*

REGULATIONS.

Regulations etc.
Feb. 11, 1895; s. 6, v. 28, p. 651.

2395. It shall be the duty of the Secretary of War to establish and enforce proper regulations for the custody, preservation, and care of the monuments now erected or which may be hereafter erected within the limits of the said national military park; and such rules shall provide for convenient access by visitors to all such monuments within the park, and the ground included therein, on such days and within such hours as may be designated and authorized by the Secretary of War. *Sec. 6, act of February 11, 1895 (28 Stat. L., 651).*

THE SHILOH NATIONAL MILITARY PARK.

Par.
2396. Extent, designation.
2397. Acquisition of lands.
2398. Commissioners, appointment, compensation.
2399. The same, duties.
2400, 2401. The same, location of office.
Par.
2401. Marking lines of battle.
2402. Injuries to monuments, trees, etc.
2403. Leases.
2404. Appropriation.
2405, 2406. Condemned cannon, balls, etc.

Shiloh National Military Park established.
Dec. 27, 1894, s. 1, v. 28, p. 597.

2396. In order that the armies of the Southwest which served in the civil war, like their comrades of the Eastern armies at Gettysburg and those of the Central West at

---

[1] For other statutes imposing penalties for offenses committed in national military parks, see act of March 3, 1897 (29 Stat. L., 621), paragraph 2352, *ante*.

Chickamauga, may have the history of one of their memorable battles preserved on the ground where they fought, the battlefield of Shiloh, in the State of Tennessee, is hereby declared to be a national military park, whenever title to the same shall have been acquired by the United States and the usual jurisdiction over the lands and roads of the same shall have been granted to the United States by the State of Tennessee; that is to say, the area inclosed by the following lines, or so much thereof as the commissioners of the park may deem necessary, to wit: Beginning at low-water mark on the north bank of Snake Creek where it empties into the Tennessee River; thence westwardly in a straight line to the point where the river road to Crumps Landing, Tennessee, crosses Snake Creek; thence along the channel of Snake Creek to Owl Creek; thence along the channel of Owl Creek to the crossing of the road to Purdy, Tennessee; thence southwardly in a straight line to the intersection of an east and west line drawn from the point where the road to Hamburg, Tennessee, crosses Lick Creek, near the mouth of the latter; thence eastward along the said east and west line to the point where the Hamburg road crosses Lick Creek; thence along the channel of Lick Creek to the Tennessee River; thence along low-water mark of the Tennessee River to the point of beginning, containing three thousand acres, more or less, and the area thus inclosed shall be known as the Shiloh National Military Park: *Provided*, That the boundaries of the land authorized to be acquired may be changed by the said commissioners. *Sec. 1, act of December 27, 1894 (28 Stat. L., 597).*

Secretary of War to acquire land, etc.
Sec. 2, *ibid.*

2397. The establishment of the Shiloh National Military Park shall be carried forward under the control and direction of the Secretary of War, who, upon the passage of this act, shall proceed to acquire title to the same either under the act approved August first, eighteen hundred and eighty-eight, entitled "An act to authorize the condemnation of land for sites of public buildings, and for other purposes," or under the act approved February twenty-seventh, eighteen hundred and sixty-seven, entitled "An act to establish and protect national cemeteries," as he may select, and as title is procured to any portion of the lands and roads within the legal boundaries of the park he may proceed with the establishment of the park upon such portions as may thus be acquired. *Sec. 2, ibid.*

COMMISSIONERS.

Commissioners. Sec. 4, *ibid.*

2398. The affairs of the Shiloh National Military Park shall, subject to the supervision and direction of the Secretary of War, be in charge of three commissioners, to be appointed by the Secretary of War, each of whom shall have served at the time of the battle in one of the armies engaged therein, one of whom shall have served in the Army of the Tennessee, commanded by General U. S. Grant, who shall be chairman of the commission; one in the Army of the Ohio, commanded by General D. C. Buell; and one in the Army of the Mississippi, commanded by General A. S. Johnston. The said commissioners shall have an office in the War Department building, and while on actual duty shall be paid such compensation out of the appropriations provided by this act as the Secretary of War shall deem reasonable and just; and, for the purpose of assisting them in their duties and in ascertaining the lines of battle of all troops engaged and the history of their movements in the battle, the Secretary of War shall have authority to employ, at such compensation as he may deem reasonable, to be paid out of the appropriations made by this act, some person recognized as well informed concerning the history of the several armies engaged at Shiloh, and who shall also act as secretary of the commission. *Sec. 4, ibid.*

Compensation etc.

Duty of commission. Sec. 5, *ibid.*

2399. It shall be the duty of the commission named in the preceding section, under the direction of the Secretary of War, to open or repair such roads as may be necessary to the purposes of the park, and to ascertain and mark with historical tablets or otherwise, as the Secretary of War may determine, all lines of battle of the troops engaged in the battle of Shiloh and other historical points of interest pertaining to the battle within the park or its vicinity, and the said commission in establishing this military park shall also have authority, under the direction of the Secretary of War, to employ such labor and services and to obtain such supplies and material as may be necessary to the establishment of the said park under such regulations as he may consider best for the interest of the Government, and the Secretary of War shall make and enforce all needed regulations for the care of the park. *Sec. 5, ibid.*

Location of office; limitation on purchases of land.

2400. The commissioners appointed under the act of Congress approved December twenty-seventh, eighteen

Mar. 2, 1895, v. 28, p. 945. June 4, 1897, v. 30, p. 43.

hundred and ninety-four, to have charge, under the Secretary of War, of the affairs of the Shiloh National Military Park, shall have their office at Pittsburg Landing, Tennessee, or at such other point convenient to the battlefield of Shiloh, Tennessee, as the Secretary of War may direct; and the limit of cost of all the lands to be embraced in the said park is hereby fixed at not to exceed fifty thousand dollars.[1] *Act of March 2, 1895 (28 Stat. L., 945).*

MARKING LINES OF BATTLE, MONUMENTS, ETC.

Marking lines of battle, etc. Dec. 27, 1894, s. 6, v. 28, p. 597.

2401. It shall be lawful for any State that had troops engaged in the battle of Shiloh to enter upon the lands of the Shiloh National Military Park for the purpose of ascertaining and marking the lines of battle of its troops engaged therein· *Provided*, That before any such lines are permanently designated the position of the lines and the proposed methods of marking them by monuments, tablets, or otherwise shall be submitted to and approved by the Secretary of War, and all such lines, designs, and inscriptions for the same shall receive the written approval of the Secretary, which approval shall be based upon formal written reports, which must be made to him in each case by the commissioners of the park: *Provided*, That no discrimination shall be made against any State as to the manner of designating lines, but any grant made to any State by the Secretary of War may be used by any other State. *Sec. 6, act of December 27, 1894 (28 Stat. L., 597).*

Discriminations forbidden.

INJURIES TO MONUMENTS, TABLETS, ETC.

Penalty for destroying monuments, etc. Sec. 7, *ibid.*

2402. If any person shall, except by permission of the Secretary of War, destroy, mutilate, deface, injure, or remove any monument, column, statues, memorial structures, or work of art that shall be erected or placed upon the grounds of the park by lawful authority, or shall destroy or remove any fence, railing, inclosure, or other work for the protection or ornament of said park, or any portion thereof, or shall destroy, cut, hack, bark, break down, or otherwise injure any tree, bush, or shrubbery that may be growing upon said park, or shall cut down or fell or remove any timber, battle relic, tree or trees growing or being upon said park, or hunt within the limits of the park, or shall remove or destroy any breastworks, earthworks, walls, or other defenses or shelter on any part thereof constructed by the armies formerly engaged in the battles on the lands or approaches to the park, any person so offending and found guilty thereof, before any justice of the peace of the county in which the offense may be committed, or any court of competent jurisdiction, shall for each and every such offense forfeit and pay a fine, in the discretion of the justice, according to the aggravation of the offense, of not less than five nor more than fifty dollars, one-half for the use of the park and the other half to the informer, to be enforced and recovered before such justice in like manner as debts of like nature are now by law recoverable in the several counties where the offense may be committed.[1] *Sec. 7, ibid.*

---

[1] The act of June 4, 1897 (30 Stat. L., 43), contained the requirement that "the limit of cost of all the lands to be embraced in the said park is hereby increased to not to exceed fifty thousand dollars."

LEASES.

Leases, etc., authorized.
Sec. 3, *ibid.*

2403. The Secretary of War is hereby authorized to enter into agreements whereby he may lease, upon such terms as he may prescribe, with such present owners or tenants of the lands as may desire to remain upon it, to occupy and cultivate their present holdings upon condition that they will preserve the present buildings and roads and the present outlines of field and forest, and that they only will cut trees or underbrush under such regulations as the Secretary may prescribe, and that they will assist in caring for and protecting all tablets, monuments, or such other artificial works as may from time to time be erected by proper authority. *Sec. 3, ibid.*

MISCELLANEOUS REQUIREMENTS.

Appropriation for expenses.
Sec. 8, *ibid.*

2404. To enable the Secretary of War to begin to carry out the purpose of this act, including the condemnation or purchase of the necessary land, marking the boundaries of the park, opening or repairing necessary roads, restoring the field to its condition at the time of the battle, maps and surveys, and the pay and expenses of the commissioners and their assistant, the sum of seventy-five thousand dollars, or such portion thereof as may be necessary, is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated; and disbursements under this act shall require the approval of the Secretary of War, and he shall make annual report of the same to Congress. *Sec. 8, ibid.*

Disbursements.

---

[1] For general statutes in respect to offenses in national military parks, see the act of March 3, 1897 (39 Stat. L., 621), paragraphs 2352 to 2355 *ante*.

Condemned cannon and balls to be furnished. June 11, 1896, v. 29, p. 442.

2405. The Secretary of War and the Secretary of the Navy are hereby authorized to deliver to the Commissioners of the Shiloh National Military Park, at the park, upon the requisition of said Commissioners, such condemned cannon, cannon balls, and shells as may be needed for the purposes of the park. *Act of June 11, 1896 (29 Stat. L., 442).*

The same. Feb. 26, 1898, v. 29, p. 442.

2406. The Secretary of War and the Secretary of the Navy are hereby authorized to deliver to the Commissioners of the Shiloh National Military Park, at the park, upon the requisition of the Commissioners, such condemned cannon, cannon balls, and shells as may be needed for the purposes of the park. *Act of February 26, 1898 (29 Stat. L., 442).*

THE VICKSBURG NATIONAL MILITARY PARK.

Par.
2407. Establishment, extent.
2408. Acquisition of lands.
2409. Leases.
2410. Commissioners' office; salary.
Par.
2411. The same, duties.
2412. State monuments.
2413. Injuries to monuments, trees, etc.
2414. Construction of park.

Boundaries of park. Feb. 21, 1899, v. 30, p. 841.

2407. In order to commemorate the campaign and siege and defense of Vicksburg, and to preserve the history of the battles and operations of the siege and defense on the ground where they were fought and were carried on, the battlefield of Vicksburg, in the State of Mississippi, is hereby declared to be a national military park whenever the title to the same shall have been acquired by the United States and the usual jurisdiction over the lands and roads of the same shall have been granted to the United States by the State of Mississippi; that is to say, the area inclosed by the following lines, or so much thereof as the commissioners of the park may deem necessary, to wit: Beginning near the point where the graveyard road, now known as the City Cemetery road, crosses the line of the Confederate earthworks; thence north about eighty rods; thence in an easterly direction about one hundred and twenty rods; thence in a southerly direction, and keeping as far from the line of the Confederate earthworks as the purposes of the park may require and as the park commission, to be hereinafter named, may determine, but not distant from the nearest point on said line of Confederate earthworks more than one hundred and sixty rods at any part, to a point about forty rods south and from eighty to one hundred and sixty rods east of Fort Garrott, also known as the "Square Fort;" thence in a westerly direction to a point in the rear of said Fort Garrott; thence in a northerly direction across the line of the Confederate earthworks and to a point about two hundred feet in the rear of the said line of Confederate earthworks; thence in a general northerly direction, and at an approximate distance of about two hundred feet in the rear of the line of Confederate earthworks as the conformation of the ground may require, to the place of beginning. This to constitute the main body of the park. In addition thereto a strip of land about two hundred and sixty-four feet in width, along and including the remaining parts of the Confederate earthworks, namely, from the north part of said main body of the park to and including Fort Hill or Fort Nogales on the high hill overlooking the national cemetery, and from the south part of said main body of the park to the edge of the bluff at the river below the city of Vicksburg; and also in addition thereto a strip of land about two hundred and sixty-four feet in width, as near as may be, along and including the Federal lines opposed to the Confederate lines herein and above named and not included in the main body of the park; and in further addition thereto such points of interest as the commission may deem necessary for the purposes of the park and the Secretary of War may approve; the whole containing about one thousand two hundred acres, and costing not to exceed forty thousand dollars.[1] *Act of February 21, 1899 (30 Stat. L., 841).*

Acquisition of lands.
Sec. 2, *ibid.*

2408. The establishment of the Vicksburg national military park shall be carried forward under the control and direction of the Secretary of War; and the Secretary of War shall, upon the passage of this act, proceed to acquire title to the same by voluntary conveyance or under the act approved August first, eighteen hundred and eighty-eight, entitled "An act to authorize the condemnation of land for sites of public buildings, and for other purposes," or under act approved February twenty-second, eighteen hundred and sixty-seven, entitled "An act to establish and protect national cemeteries," as he may elect or deem practicable; and when title is procured to all of the lands and roads within the boundaries of the proposed park, as described in section one of this act, he may proceed with the establishment of the park, and he shall detail an officer of the Engineer Corps of the Army to assist the commissioners in establishing the park. *Sec. 2, ibid.*

---

[1] The act of February 9, 1900 (31 Stat. L., 12), contains the requirement that "the sum of five thousand dollars, or so much of said amount as may be necessary, may be expended, with the approval of the Secretary of War, in addition to the amount authorized by section one of the act approved February twenty-first, eighteen hundred and ninety-nine, in the purchase of lands to be used as a part of the site of said park." This clause operates to increase the limit of expenditure for land from $40,000 to $45,000. By the act of June 6, 1900 (31 ibid., 625), the additional amount of $6,000 was appropriated for the purchase of lands.

Leases. Sec. 3, *ibid.*

2409. The Secretary of War is hereby authorized to enter into agreements of leasing, upon such terms as he may prescribe, with such occupants or tenants of the lands as may desire to remain upon it, to occupy and cultivate their present holdings upon condition that they will preserve the present buildings and roads and the present outlines of field and forest, and that they will only cut trees or underbrush under such regulations as the Secretary of War may prescribe, and that they will assist in caring for and protecting all tablets, monuments, or such other artificial works as may from time to time be erected by proper authority: *Provided*, That the United States shall at all times have and retain full right, power, and authority to take possession of any and all parts or portions of said premises and to remove and expel therefrom any such occupant, tenant, or other person or persons found thereon whenever the Secretary of War or the commissioners shall deem it proper or necessary; and such right, power, and authority shall be reserved in express terms in all leases and agreements giving or granting such occupant or tenant the right to remain in possession as herein contemplated; and thereupon said occupant or tenant or other persons who may be required to vacate said premises shall each and all at once surrender and deliver up the possession thereof. *Sec. 3, ibid.*

Commissioners' office; salary. Sec. 4, *ibid.*

2410. The affairs of the Vicksburg national military park shall, subject to the supervision and direction of the Secretary of War, be in charge of three commissioners, to be appointed by the Secretary of War, each of whom shall have served at the time of the siege and defense in one of the armies engaged therein, two of whom shall have served in the army commanded by General Grant and one in the army commanded by General Pemberton. The commissioners shall elect one of their number chairman; they shall also elect, subject to the approval of the Secretary of War, a secretary, who shall also be historian, and who shall possess the requisite qualifications of a commissioner, and they and the secretary shall have an office in the city of Vicksburg, Mississippi, or on the grounds of the park, and be paid such compensation as the Secretary of War shall deem reasonable and just. *Sec. 4, ibid.*

Duties. Sec. 5, *ibid.*

2411. It shall be the duty of the commissioners named in the preceding section, under the direction of the Secretary of War, to restore the forts and the lines of fortification, the parallels and the approaches of the two armies, or so much thereof as may be necessary to the purposes of this park; to open and construct and to repair such roads as may be necessary to said purposes, and to ascertain and mark with historical tablets, or otherwise, as the Secretary of War may determine, the lines of battle of the troops engaged in the assaults, and the lines held by the troops during the siege and defense of Vicksburg, the headquarters of General Grant and of General Pemberton, and other historical points of interest pertaining to the siege and defense of Vicksburg within the park or its vicinity; and the said commissioners in establishing this military park shall also have authority under the direction of the Secretary of War to do all things necessary to the purposes of the park, and for its establishment under such regulations as he may consider best for the interest of the Government, and the Secretary of War shall make and enforce all needful regulations for the care of the park.[1] *Sec. 5, ibid.*

State monuments, erection. Sec. 6, *ibid.*

2412. It shall be lawful for any State that had troops engaged in the siege and defense of Vicksburg to enter upon the lands of the Vicksburg National Military Park for the purpose of ascertaining and marking the lines of battle of its troops engaged therein: *Provided*, That before any such lines are permanently designated the position of the lines and the proposed methods of marking them by monuments, tablets, or otherwise shall be submitted to and approved by the Secretary of War, and all such lines, designs, and inscriptions for the same shall first receive the written approval of the Secretary of War, which approval shall be based upon formal written reports which must be made to him in each case by the commissioners of the park; and no monument, tablet, or other designating indication shall be erected or placed within said park or vicinity without such written authority of the Secretary of War: *Provided*, That no discrimination shall be made against any State as to the manner of designating lines, but any grant made to any State by the Secretary of War may be used by any other State. The provisions of this section shall also apply to organizations and persons; and as the Vicksburg National Cemetery is on ground partly occupied by Federal lines during the siege of Vicksburg, the provisions of this section, as far as may be practicable, shall apply to monuments or tablets designating such lines within the limits of that cemetery. *Sec. 6, ibid.*

---

[1] The employment of persons to aid the Vicksburg Military Park Commission in preparing abstracts of title to and conveyances of lands to be purchased for park purposes is not the employment of "attorneys or counsel," within the meaning of section 189, Revised Statutes, which provides that "no head of a department shall employ attorneys or counsel." The employment of such persons is authorized, and compensation for such services may be made from the appropriation made in section 8 of the act of February 21, 1899, 30 Stat. L., 841. 6 Comp. Dec., 133.

Injury to monuments, etc.
Sec. 7, *ibid.*

2413. If any person shall, except by permission of the Secretary of War, destroy, mutilate, deface, injure, or remove any monument, column, statue, memorial structure, tablet, or work of art that shall be erected or placed upon the grounds of the park by lawful authority, or shall destroy or remove any fence, railing, inclosure, or other work intended for the protection or ornamentation of said park, or any portion thereof, or shall destroy, cut, hack, bark, break down, or otherwise injure any tree, bush, or shrub that may be growing upon said park, or shall cut down or fell or remove any timber, battle relic, tree, or trees growing or being upon said park, or hunt within the limits of the park, or shall remove or destroy any breastworks, earthworks, walls, or other defenses or shelter on any part thereof constructed by the armies formerly engaged in the battles, on the lands or approaches to the park, any person so offending and found guilty thereof, before any United States commissioner or court, justice of the peace of the county in which the offense may be committed, or any court of competent jurisdiction, shall for each and every such offense forfeit and pay a fine in the discretion of the said commissioner or court of the United States or justice of the peace, according to the aggravation of the offense, of not less than five nor more than five hundred dollars, one-half for the use of the park and the other half to the informant, to be enforced and recovered before such United States commissioner or court or justice of the peace or other court in like manner as debts of like nature are now by law recoverable in the several counties where the offense may be committed. *Sec. 7, ibid.*

Construction of park.
Sec. 8, *ibid.*

2414. To enable the Secretary of War to begin to carry out the purpose of this act, including the condemnation or purchase of the necessary land, marking the boundaries of the park, opening or repairing necessary roads, restoring the field to its condition at the time of the battle, maps and surveys, material, labor, clerical and all other necessary assistants, and the pay and expenses of the commissioners and their secretary and assistants, the sum of sixty-five thousand dollars, or such portion thereof as may be necessary, is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, and disbursements under this act shall require the approval of the Secretary of War, and he shall make annual report of the same to Congress. *Sec. 8, ibid.*

THE ANTIETAM BATTLEFIELD.

Par.
2415. Locating lines of battle.
2416. Tablets.
2417. Marking lines.
2418. Appropriation.

Par.
2419. The same, South Mountain, Harpers Ferry, etc.
2420. Condemned cannon, balls, etc.
2421. Condemned gun carriages.
2422. Superintendent.

Preserving, etc., lines of battle, etc.
Aug. 30, 1890, v. 26, p. 401.

2415. For the purpose of surveying, locating, and preserving the lines of battle of the Army of the Potomac and of the Army of Northern Virginia at Antietam, and for marking the same, and for locating and marking the position of each of the forty-three different commands of the Regular Army engaged in the battle of Antietam, and for the purchase of sites for tablets for the marking of such positions, fifteen thousand dollars. And all lands acquired by the United States for this purpose, whether by purchase, gift, or otherwise, shall be under the care and supervision of the Secretary of War. *Act of August 30, 1890 (26 Stat. L., 401).*

Tablets, etc.
Aug. 5, 1892, v. 27, p. 377.

2416. For the purpose of surveying, locating, and preserving the lines of battle of the Army of the Potomac and of the Army of Northern Virginia at Antietam, and for marking the same, and for locating and marking the positions of each of the forty-three different commands of the Regular Army engaged in the battle of Antietam, and for the purchase of sites for tablets for the marking of such positions, as follows: For cost of one hundred and fourteen tablets, transporting and setting up of same, purchase of one hundred and fourteen sites for tablets, salaries of board, including office rent, hire of vehicles, mileage, and for condemnation of land and acquiring title for same, in all, sixteen thousand three hundred and ten dollars: *Provided*, That in acquiring land for the sites for tablets on the battlefield, the Secretary of War is authorized to proceed in accordance with act approved March third, eighteen hundred and ninety-one, making appropriations for sundry civil expenses under title "Chickamauga and Chattanooga National Park." *Act of August 5, 1892 (27 Stat. L., 377).*

Marking lines, etc.
Mar. 3, 1893, v. 27, p. 599.

2417. For continuing the work of surveying, locating, and preserving lines of battle of the Army of the Potomac and of the Army of Northern Virginia at Antietam, and for locating and marking the positions of the forty-three different commands of the Regular Army engaged in the battle of Antietam, and for purchase of sites for tablets for marking the same, and for the purchase of roadway to tablets, as follows: For the purchase of fifty additional tablets, and transporting and setting up same; purchase of fifty additional sites for tablets; salaries of board, including office rent, hire of vehicles, and mileage, and for the condemnation of the land and acquiring title of the same, and for the purchase of land for roadway from a point on the Sharpsburg and Hagerstown turnpike to a point on the Sharpsburg and Boonsboro turnpike (said land is known as the Bloody Lane or Sunken Road), and for repairing and fencing in said roadway, fifteen thousand dollars.

Roadway.

Continuing work.
Mar. 2, 1895, v. 28, p. 950.

2418. For completing the work of locating, preserving, and marking the lines of battle at Antietam, and for properly marking with tablets, each bearing a brief historical legend compiled without praise and without censure, the position occupied by the several commands of the Armies of the Potomac and of Northern Virginia on that field, and for opening and improving avenues along the positions occupied by troops upon those lines, and for fencing the same, nine thousand four hundred and twenty-one dollars, to be immediately available, and to be expended under the direction of the Secretary of War. *Act of March 2, 1895 (28 Stat. L., 950).*

Cannon, etc.-for marking positions.
Mar. 3, 1893, v. 27, p. 599.

2419. The Secretary of War is authorized to supply at Antietam such number of cannon and cannon balls as his judgment may approve, and which can be spared, for the purpose of marking the positions of the different commands engaged in the battle of Antietam. *Act of March 3, 1893 (27 Stat. L., 599).*

Gun carriages.
Mar. 2, 1895, v. 28, p. 950.

2420. The Secretary of War be, and he is hereby, authorized to supply fifty unserviceable wooden field-gun carriages, of the type used during the civil war, for the purpose of marking the positions occupied by batteries of artillery on the said field. *Act of March 2, 1895 (28 Stat. L., 950).*

South Mountain, Harpers Ferry, Cramptons Gap, and Shepherdstown.
June 11, 1896, v. 29, p. 443.

2421. For completing the work of locating, preserving, and marking the positions of troops and lines of battle of the Union and Confederate armies at Antietam, and the closely related battles of Harpers Ferry, South Mountain, Cramptons Gap, and Shepherdstown, the said lines and positions to be marked with cast-iron tablets, each bearing a brief historical legend compiled without praise and without censure; for improvement of roads owned by the United States at Antietam; for monuments of cannon balls and bases therefor to mark the localities where six general officers were killed; for completing the observatory towers; for guideposts; for preparing and publishing maps indicating the movements and positions of troops engaged in the battles and in the Antietam campaign; and for services and materials incidental to the foregoing, seventeen thousand dollars, to be expended under the direction of the Secretary of War. *Act of June 11, 1896* (*29 Stat. L.*, *443*).

Superintendent.
June 6, 1900, v. 31, p. 630.

2422. For pay of superintendent of Antietam battlefield, said superintendent to perform his duties under the direction of the Quartermaster's Department and to be selected and appointed by the Secretary of War, at his discretion, the person selected and appointed to this position to be an honorably discharged Union soldier, one thousand two hundred dollars. *Act of June 6, 1900* (*31 Stat. L.*, *630*).

THE YELLOWSTONE NATIONAL PARK.

Par.
2423–2436. Establishment and jurisdiction.
2437–2441. Protection of birds and animals.
2442, 2443. Leases.
Par.
2444. Employees.
2445. Details of troops.
2446. Improvements.
2447. Employment of troops.

ESTABLISHMENT AND JURISDICTION.

Par.
2423. Establishment.
2424. Control of Secretary of the Interior.
2425. Preservation of fish and game.
2426, 2427. Jurisdiction.
2428. The same; laws of Wyoming.
2429. United States commissioner.
Par.
2430. Duties, trials.
2431. Process in felony cases.
2432. Fees.
2433. Deputy marshals.
2434. Jail.
2435. Costs.
2436. Existing laws continued.

Public park established near the head waters of the Yellowstone River.
Mar. 1, 1872, c. 24, s. 1, v. 17, p. 32.
Sec. 2474, R. S.

2423. The tract of land in the Territories of Montana and Wyoming, lying near the head waters of the Yellowstone River, and described as follows, to wit, commencing at the junction of Gardiner's River with the Yellowstone River, and running east to the meridian passing ten miles to the eastward of the most eastern point of Yellowstone Lake; thence south along said meridian to the parallel of latitude passing ten miles south of the most southern point of Yellowstone Lake; thence west along said parallel to the meridian passing fifteen miles west of the most western point of Madison Lake; thence north along said meridian to the latitude of the junction of the Yellowstone and Gardiner's Rivers; thence east to the place of beginning, is reserved and withdrawn from settlement, occupancy, or sale under the laws of the United States, and dedicated and set apart as a public park or pleasuring ground for the benefit and enjoyment of the people; and all persons who locate, or settle upon, or occupy any part of the land thus set apart as a public park, except as provided in the following section, shall be considered trespassers and removed therefrom.[1]

SUPERVISION.

Secretary of the Interior to have exclusive control of the park.
Sec. 2, *ibid.*
Sec. 2475, R.S.

2424. Such public park shall be under the exclusive control of the Secretary of the Interior, whose duty it shall be, as soon as practicable, to make and publish such regulations as he may deem necessary or proper for the care and management of the same. Such regulations shall provide for the preservation, from injury or spoliation, of all timber, mineral deposits, natural curiosities, or wonders, within the park, and their retention in their natural condition.

Preservation of fish and game.
Sec. 2475, R.S.

Removal of trespassers.

2425. He shall provide against the wanton destruction of the fish and game found within the park, and against their capture or destruction for the purpose of merchandise or profit. He shall also cause all persons trespassing upon the same to be removed therefrom, and generally is authorized to take all such measures as may be necessary or proper to fully carry out the objects and purposes of this section.[2]

JURISDICTION.

Sole jurisdiction of United States.
May 7, 1894, v. 28, p. 73.

2426. The Yellowstone National Park, as its boundaries now are defined, or as they may be hereafter defined or extended, shall be under the sole and exclusive jurisdiction of the United States; and that all the laws applicable to places under the sole and exclusive jurisdiction of the United States shall have force and effect in said park:[1] *Provided, however*, That nothing in this act shall be construed to forbid the service in the park of any civil or criminal process of any court having jurisdiction in the States of Idaho, Montana, and Wyoming. All fugitives from justice taking refuge in said park shall be subject to the same laws as refugees from justice found in the State of Wyoming. *Sec. 1, act of May 7, 1894 (28 Stat L., 73).*

---

[1] The boundaries of the Yellowstone Park are described in the act of March 1, 1872 (17 Stat. L., 32), above cited. Under the authority conferred by the act of March 3, 1891 (26 Stat. L., 1095); the President on March 30, 1891, set apart as a forest reservation a tract of land adjoining the Yellowstone Park, the limits of which are described in proclamation No. 17 (26 Stat. L., 1565). On September 10, 1891, by proclamation No. 6 (27 Stat. L., 11), a second tract of land was similarly reserved.

[2] See, also, section 4, act of May 7, 1894 (28 Stat. L., 73), par. 2437, *post.*

State process.

Jurisdiction of Wyoming judicial district. Sec. 2, *ibid.*

2427. Said park, for all the purposes of this act, shall constitute a part of the United States judicial district of Wyoming, and the district and circuit courts of the United States in and for said district shall have jurisdiction of all offenses committed within said park. *Sec. 2, ibid.*

Punishment of offenses under Wyoming laws. Sec. 3, *ibid.*

2428. If any offense shall be committed in said Yellowstone National Park, which offense is not prohibited or the punishment is not specially provided for by any law of the United States or by any regulation of the Secretary of the Interior, the offender shall be subject to the same punishment as the laws of the State of Wyoming in force at the time of the commission of the offense may provide for a like offense in the said State; and no subsequent repeal of any such law of the State of Wyoming shall affect any prosecution for said offense committed within said park. *Sec. 3, ibid.*

UNITED STATES COMMISSIONER.

Commissioner, May 7, 1895, s. 5, v. 28, p. 73.

2429. The United States circuit court in said district shall appoint a commissioner, who shall reside in the park, who shall have jurisdiction to hear and act upon all complaints made, of any and all violations of the law, or of the rules and regulations made by the Secretary of the Interior for the government of the park, and for the protection of the animals, birds, and fish and objects of interest

---

[1] Section 2 of the act of July 10, 1890 (26 Stat. L., 222), by which the State of Wyoming was admitted to the Union, contained the following clause: "That nothing in this act contained shall repeal or affect any act of Congress relating to the Yellowstone National Park, or the reservation of the park as now defined, or as may be hereafter defined or extended, or the power of the United States over it; and nothing contained in this act shall interfere with the right and ownership of the United States in said park and reservation as it now is or may hereafter be defined or extended by law; but exclusive legislation, in all cases whatsoever, shall be exercised by the United States, which shall have exclusive control and jurisdiction over the same; but nothing in this proviso contained shall be construed to prevent the service within said park of civil and criminal process lawfully issued by the authority of said State; and the said State shall not be entitled to select indemnity school lands for the sixteenth and thirty-sixth sections that may be in said park reservation as the same is now defined or may be hereafter defined."

This statute operated to reserve to the United States exclusive jurisdiction and control over the park as then defined or as it might be thereafter defined or extended by enactment of Congress. By the act of May 7, 1894 (28 Stat. L., 73), paragraph 2427, *post*, Congress assumed the jurisdiction authorized by the act of July 10, 1890.

Duties. therein, and for other purposes authorized by this act. Such commissioner shall have power, upon sworn information, to issue process in the name of the United States for the arrest of any person charged with the commission of any misdemeanor, or charged with the violation of the rules and regulations, or with the violation of any provision of this act prescribed for the government of said park, and for the protection of the animals, birds, and fish in the said park, and to try the person so charged, and, if found guilty, to impose the punishment and adjudge the forfeiture prescribed. *Section 5, act of May 7, 1894 (28 Stat. L., 73).* Trials.

Appeals. Sec. 5, *ibid.* **2430.** In all cases of conviction an appeal shall lie from the judgment of said commissioner to the United States district court for the district of Wyoming, said appeal to be governed by the laws of the State of Wyoming providing for appeals in cases of misdemeanor from justices of the peace to the district court of said State; but the United States circuit court in said district may prescribe rules of procedure and practice for said commissioner in the trial of cases and for appeal to said United States district court. *Ibid.*

Process in felony cases. *Ibid.* **2431.** Said commissioner shall also have power to issue process as hereinbefore provided for the arrest of any person charged with the commission of any felony within the park, and to summarily hear the evidence introduced, and, if he shall determine that probable cause is shown for holding the person so charged for trial, shall cause such person to be safely conveyed to a secure place for confinement, within the jurisdiction of the United States district court in said State of Wyoming, and shall certify a transcript of the record of his proceedings and the testimony in the case to the said court, which court shall have jurisdiction of the case: *Provided*, That the said commissioner shall grant bail in all cases bailable under the laws of the United States or of said State. All process issued by the commissioner shall be directed to the marshal of the United States for the district of Wyoming; but nothing herein contained shall be construed as preventing the arrest by any officer of the Government or employee of the United States in the park without process of any person taken in the act of violating the law or any regulation of the Secretary of the Interior: *Provided*, That the said commissioner shall only exercise such authority and powers as are conferred by this act. *Ibid.* Bail, etc. Summary arrests. Limit of authority.

Fees, etc.
Sec. 7, *ibid.*

2432. That the commissioner provided for in this act shall, in addition to the fees allowed by law to commissioners of the circuit courts of the United States, be paid an annual salary of one thousand dollars,[1] payable quarterly, and the marshal of the United States and his deputies, and the attorney of the United States and his assistants in said district, shall be paid the same compensation and fees as are now provided by law for like services in said district. *Sec. 7, ibid.*

Deputy marshals.
Sec. 6, *ibid.*

2433. The marshal of the United States for the district of Wyoming may appoint one or more deputy marshals for said park, who shall reside in said park, and the said United States district and circuit courts shall hold one session of said courts annually at the town of Sheridan, in the State of Wyoming, and may also hold other sessions at any other place in said State of Wyoming or in said national park at such dates as the said courts may order. *Sec. 6, ibid.*

Terms of court.

Jail.

2434. The Secretary of the Interior shall cause to be erected in the park a suitable building to be used as a jail, and also having in said building an office for the use of the commissioner, the cost of such building not to exceed five thousand dollars, to be paid out of any moneys in the Treasury not otherwise appropriated upon the certificate of the Secretary as a voucher therefor. *Sec. 9, ibid.*

Costs, etc.
Sec. 8, *ibid.*

2435. All costs and expenses arising in cases under this act, and properly chargeable to the United States, shall be certified, approved, and paid as like costs and expenses in the courts of the United States are certified, approved, and paid under the laws of the United States. *Sec. 8, ibid.*

Existing laws.

2436. This act shall not be construed to repeal existing laws conferring upon the Secretary of the Interior and the Secretary of War certain powers with reference to the protection, improvement, and control of the said Yellowstone National Park. *Sec. 10, ibid.*

PROTECTION OF BIRDS AND ANIMALS.

Par.
2437. Prohibition of hunting and fishing.
2438. Evidence of violation.
2439. Unlawful transportation of game.
Par.
2440. Forfeiture of guns, traps, etc.
2441. Regulations.

Prohibition of hunting, fishing, etc.
May 7, 1894, s. 4, v. 28, p. 73.

2437. All hunting, or the killing, wounding, or capturing at any time of any bird or wild animal, except dangerous animals, when it is necessary to prevent them from destroying human life or inflicting an injury, is prohibited within the limits of said park; nor shall any fish be taken out of the waters of the park by means of seines, nets, traps, or by the use of drugs or any explosive substances or compounds, or in any other way than by hook and line, and then only at such seasons and in such times and manner as may be directed by the Secretary of the Interior. *Sec. 4, act of May 7, 1894 (28 Stat. L., 73).*

---

[1] The act of February 19, 1896 (29 Stat. L., 578), and subsequent acts of appropriation contain the requirement that section 21, of the act of May 28, 1896 (29 Stat. L., 184), shall not be construed "as impairing the right of said commissioner to receive said salary as herein provided."

Evidence of violation. Sec. 4, *ibid.*

2438. Possession within the said park of the dead bodies, or any part thereof, of any wild bird or animal shall be prima facie evidence that the person or persons having the same are guilty of violating this act. *Ibid.*

Penalty for unlawful transportation, etc. *Ibid.*

2439. Any person or persons, or stage or express company or railway company, receiving for transportation any of the said animals, birds, or fish so killed, taken, or caught shall be deemed guilty of a misdemeanor, and shall be fined for every such offense not exceeding three hundred dollars. Any person found guilty of violating any of the provisions of this act or any rule or regulation that may be promulgated by the Secretary of the Interior with reference to the management and care of the park, or for the protection of the property therein, for the preservation from injury or spoliation of timber, mineral deposits, natural curiosities or wonderful objects within said park, or for the protection of the animals, birds, and fish in the said park, shall be deemed guilty of a misdemeanor, and shall be subjected to a fine of not more than one thousand dollars or imprisonment not exceeding two years, or both, and be adjudged to pay all costs of the proceedings. *Ibid.*

Forfeiture of guns, traps, etc. *Ibid.*

2440. All guns, traps, teams, horses, or means of transportation of every nature or description used by any person or persons within said park limits when engaged in killing, trapping, ensnaring, or capturing such wild beasts, birds, or wild animals shall be forfeited to the United States, and may be seized by the officers in said park and held pending the prosecution of any person or persons arrested under charge of violating the provisions of this act, and upon conviction under this act of such person or persons using said guns, traps, teams, horses, or other means of transportation such forfeiture shall be adjudicated as a penalty in addition to the other punishment provided in this act. Such forfeited property shall be disposed of and accounted for by and under the authority of the Secretary of the Interior. *Ibid.*

2441. The Secretary of the Interior shall make and publish such rules and regulations as he may deem necessary and proper for the management and care of the park and for the protection of the property therein, especially for the preservation from injury or spoliation of all timber, mineral deposits, natural curiosities, or wonderful objects within said park, and for the protection of the animals and birds in the park from capture or destruction, or to prevent their being frightened or driven from the park; and he shall make rules and regulations governing the taking of fish from the streams or lakes in the park. *Ibid.*

Regulations. *Ibid.*

LEASES.

Lease of grounds; conditions. Aug. 3, 1894, v. 28, p. 222.

2442. The Secretary of the Interior is hereby authorized and empowered to lease to any person, corporation, or company, for a period not exceeding ten years, at such annual rental as the Secretary of the Interior may determine, parcels of land in the Yellowstone National Park, of not more than ten acres in extent for each tract and not in excess of twenty acres in all to any one person, corporation, or company on which may be erected hotels and necessary outbuildings: *Provided*, That such lease or leases shall not include any of the geysers or other objects of curiosity or interest in said park, or exclude the public from free and convenient approach thereto or include any ground within one-eighth of a mile of any of the geysers or the Yellowstone Falls, the Grand Canyon, or the Yellowstone River, Mammoth Hot Springs, or any object of curiosity in the park.[1] *Act of August 3, 1894 (28 Stat. L., 222).*

Natural curiosities excluded.

The same subject. Aug. 3, 1894, v. 28, p. 222.

2443. Such leases shall not convey, either expressively or by implication, any exclusive privilege within the park except upon the premises held thereunder and for the time therein granted. Every lease hereafter made for any property in said park shall require the lessee to observe and obey each and every provision in any act of Congress, and every rule, order, or regulation made, or which may hereafter be made, and published by the Secretary of the Interior concerning the use, care, management, or government of the park, or any object or property therein, under penalty of forfeiture of such lease, and every such lease shall be subject to the right of revocation and forfeiture, which shall therein be reserved by the Secretary of the Interior: *And provided further*, That persons or corporations now holding leases of ground in the park may, upon the surrender thereof, be granted new leases hereunder, and upon the terms and stipulations contained in their present leases, with such modifications, restrictions, and reservations as the Secretary of the Interior may prescribe.

---

[1] Section 2474, Revised Statutes, had contained the following requirement: "The Secretary may, in his discretion, grant leases for building purposes, for terms not exceeding ten years, of small parcels of ground, at such places in the park as may require the erection of buildings for the accommodation of visitors; all of the proceeds of such leases, and all other revenues that may be derived from any source connected with the park, to be expended under his direction in the management of the same, and the construction of roads and bridle paths therein." The act of March 3, 1883 (26 Stat. L., 620), had contained the following: "The Secretary of the Interior may lease small portions of ground in the park, not exceeding ten acres in extent for each tract, on which may be erected hotels and the necessary outbuildings, and for a period not exceeding ten years; but such lease shall not include any of the geysers or other objects of curiosity or interest in said park, or exclude the public from the free and convenient approach thereto; or include any ground within one quarter of a mile of any of the geysers or the Yellowstone Falls, nor shall there be leased more than ten acres to any one person or corporation; nor shall any hotel or other buildings be erected within the park, until such lease shall be executed by the Secretary of the Interior, and all contracts, agreements, or exclusive privileges heretofore made or given in regard to said park, or any part thereof, are hereby declared to be invalid; nor shall the Secretary of the Interior, in any lease which he may make and execute, grant any exclusive privileges within said park, except upon the ground leased."

This act, however, is not to be construed as mandatory upon the Secretary of the Interior, but the authority herein given is to be exercised in his sound discretion. *Ibid.*

EMPLOYEES.

Employees. Mar. 3, 1883, v. 22, p. 626; July 7, 1884, v. 23, p. 499.

2444. For every purpose and object necessary for the protection, preservation, and improvement of the Yellowstone National Park, including conpensation of superintendent and employees, forty thousand dollars, two thousand dollars of said amount to be paid annually to a superintendent of said park, and not exceeding nine hundred dollars annually to each of ten assistants, all of whom shall be appointed by the Secretary of the Interior, and reside continuously in the park, and whose duty it shall be to protect the game, timber, and objects of interest therein; the balance of the sum appropriated to be expended in the construction and improvement of suitable roads and bridges within said park, under the supervision and direction of an engineer officer detailed by the Secretary of War for that purpose.[1] *Act of March 3, 1883 (22 Stat. L., 626).*

DETAILS OF TROOPS.

Detail of troops, etc., for protection of park. Mar. 3. 1883, v. 22, p. 626.

2445. The Secretary of War, upon the request of the Secretary of the Interior, is hereby authorized and directed to make the necessary details of troops to prevent trespassers or intruders from entering the park for the purpose of destroying the game or objects of curiosity therein, or for any other purpose prohibited by law, and to remove such persons from the park if found therein. *Act of March 3, 1883 (22 Stat. L., 626).*

---

[1] The acts of August 7, 1882 (22 Stat. L., 329), and March 3, 1883 (ibid., 626), made provision for the appointment of a superintendent of the park at a salary of $2,000 per annum, and for the employment of ten assistants at $900 each. These employees were to reside continually in the park, and it was made their duty to protect the game, timber, and objects of interest in the park. This provision was repeated in the acts of July 7, 1884 (23 Stat. L., 211), and March 3, 1885 (ibid., 499).

IMPROVEMENTS.

Improvements to be under Chief of Engineers.
June 6, 1900, v. 31, p. 625.

2446. Road extensions and improvements shall hereafter be made in said park under and in harmony with a general plan of roads and improvements to be approved by the Chief of Engineers of the Army.[1] *Act of June 6, 1900 (31 Stat. L., 625).*

EMPLOYMENT OF TROOPS.

Employment of troops.
June 6, 1900, v. 31, p. 618.

2447. The Secretary of War, upon the request of the Secretary of the Interior, is hereafter authorized and directed to make the necessary detail of troops to prevent trespassers or intruders from entering the Sequoia National Park, the Yosemite National Park, and the General Grant National Park, respectively, in California, for the purpose of destroying the game or objects of curiosity therein, or for any other purpose prohibited by law or regulation for the government of said reservations, and to remove such persons from said parks if found therein. *Act of June 6, 1900 (31 Stat. L., 618).*

---

[1] Successive acts of appropriation since that of August 4, 1886 (24 Stat. L., 210), have made provision for the construction of roads, bridges, and other works of improvement; all of them have contained the requirement that the work so authorized shall be carried on under the direction of the Secretary of War.

CHAPTER XLV.

NATIONAL CEMETERIES.

Par.
2448. Maintenance of national cemeteries.
2449. Acquisition of lands.
2450. Appraisement.
2451. Payment.
2452–2454. Superintendents.
2455–2457. Inclosures, headstones, and registers.
Par.
2458–2460. Interments.
2461, 2462. Jurisdiction, criminal offenses.
2463, 2464. The United States cemetery near the City of Mexico.
2465. Encroachments by railroads.

Maintenance of national cemeteries.
R. S., 4876, p. 951.
July 14, 1876, v. 19, p. 99.

2448. The Secretary of War shall provide for the care and maintenance of the national military cemeteries, and for this purpose shall submit an estimate with his annual estimates to Congress, and section four thousand eight hundred and seventy-six of the Revised Statutes is hereby repealed. *Act of July 24, 1876* (*19 Stat. L.*, *99*).

Acquisition of lands.
Feb. 22, 1867, c. 61, s. 4, v. 14, p. 400; July 24, 1876, c. 226, v. 19, p. 99; Mar. 2, 1877, c. 83, v. 19, p. 269.
Sec. 4870, R. S.

2449. The Secretary of War shall purchase from the owners thereof, at such price as may be mutually agreed upon between the Secretary and such owners, such real estate as in his judgment is suitable and necessary for the purpose of carrying into effect the provisions for national cemeteries, and obtain from such owners the title in fee simple for the same. And in case the Secretary of War is not able to agree with any owner upon the price to be paid for any real estate needed for such purpose, or to obtain from such owner title in fee simple for the same, the Secretary is hereby authorized to enter upon and appropriate any real estate which, in his judgment, is suitable and necessary for such purposes.

Appraisement.
Feb. 22, 1867, c. 61, s. 5, v. 14, p. 400.
Sec. 4871, R. S.

2450. The Secretary of War, or the owners of any real estate thus entered upon and appropriated, are authorized to make application for an appraisement of real estate thus entered upon and appropriated to any circuit or district court within any State or district where such real estate is situated; and such courts shall, upon such application, and in such mode and under such rules and regulations as it may adopt, make a just and equitable appraisement of the cash value of the several interests of each and every owner of such real estate and improvements thereon.

Payment.
Sec. 6, *ibid.*
Mar. 2, 1877, c. 83, v. 19, p. 269.
Sec. 4872, R.S.

2451. When appraisement of the real estate thus entered upon and appropriated has been made under the order and direction of the court, the fee simple thereof shall, upon payment to the owner of the appraised value, or in case such owner refuses or neglects for thirty days after the appraisement of the cash value of the real estate or improvements as aforesaid to demand the same from the Secretary of War upon depositing the appraised value in the court making such appraisement to the credit of such owner, be vested in the United States, and its jurisdiction over such real estate shall be exclusive and the same as its jurisdiction over real estate purchased, ceded, or appropriated for the purposes of navy-yards, forts, and arsenals. The Secretary of War is authorized and required to pay to the several owner or owners, respectively, the appraised value of the several pieces or parcels of real estate, as specified in the appraisement of any of such courts, or to pay into any of such courts by deposit, as hereinbefore provided, the appraised value; and the sum necessary for such purpose may be taken from any moneys appropriated for the purposes of national cemeteries.[1]

---

[1] To authorize payment for land appropriated for the purpose of a national cemetery under the act of February 22, 1867 (14 Stat. L., 400; sec. 4870, Rev. Stat.), the consent of the legislature of the State in which the land lies is not necessary; nor in such case is the opinion of the Attorney-General as to the validity of the title required; though as a prudential measure for the security of the Government it would seem to be highly expedient to obtain his opinion. XIII Opin. Att. Gen., 131; XIV; ibid., 271; ibid., 559.

The appraisement of land for a national cemetery, as duly made by a United States court under sections 4871 and 4872, Revised Statutes, is conclusive upon the Secretary of War, who must thereupon pay the appraised value as indicated in the latter section. If indeed there has been *fraud* in the valuation by which the court has been deceived in its decree, or its original appraisement is deemed *excessive*, it may properly be moved for a new appraisement on the part of the United States. Dig. Opin. J. A. G., 1763. See XIII Opin. Att. Gen., 27.

To authorize the acquisition by the exercise of the right of eminent domain, of private land for a national cemetery under sections 4870 and 4871, Revised Statutes, there must be (1) an existing appropriation (in conformity with the rule of section 3736, Revised Statutes) authorizing the acquisition; and (2) the private owner must be unwilling to give title, or the Secretary of War be unable to agree with him as to price. Ibid., par. 1769.

Held that, notwithstanding the provision in section 4872, Revised Statutes, that the jurisdiction of the United States over land taken for a national cemetery by the right of eminent domain "shall be exclusive," such a jurisdiction, where the land is within a State, can not legally be vested in the United States except by the cession of the State legislature. In the absence of such cession on the part of the State sovereignty an act of Congress must be powerless to confer such an authority. (*a*) Ibid.

An appropriation for the inclosure and improvement of a cemetery must be regarded as a ratification of the taking and of the intent to occupy permanently. Johnson *v.* U. S., 31 Ct. Cls., 262.

---

[a] See the subsequent opinion of the Attorney-General in XIII Opins., 131.

SUPERINTENDENTS.

Superintendents of cemeteries.
Feb. 22, 1867, c. 61, s. 2, v. 14, p. 400; July 24, 1876, c. 226, v. 19, p. 99.
Sec. 4873, R S.

2452. The Secretary of War shall cause to be erected at the principal entrance of each national cemetery a suitable building to be occupied as a porter's lodge; and shall appoint a meritorious and trustworthy superintendent to reside therein, for the purpose of guarding and protecting the cemetery and giving information to parties visiting the same.

Who may be selected as superintendents.
May 18, 1872, c. 173, s. 1, v. 17, p. 135.
Sec. 4874, R.S.

2453. The superintendents of the national cemeteries shall be selected from meritorious and trustworthy soldiers, either commissioned officers or enlisted men of the Volunteer or Regular Army, who have been honorably mustered out or discharged from the service of the United States, and who may have been disabled for active field service in the line of duty.

Salary of superintendents.
Sec. 4875, R.S.

2454. The superintendents of the national cemeteries shall receive for their compensation from sixty dollars to seventy-five dollars a month each, according to the extent and importance of the cemeteries to which they may be respectively assigned, to be determined by the Secretary of War; and they shall also be furnished with quarters and fuel at the several cemeteries.[1]

INCLOSURES, HEADSTONES, AND REGISTERS.

Inclosures, headstones, and registers.
Sec. 1, *ibid.*
June 8, 1872, c. 368, v. 17, p. 345; Mar. 3, 1873, c. 229, v. 17, p. 545.
Sec. 4877, R.S.

2455. In the arrangement of the national cemeteries established for the burial of deceased soldiers and sailors, the Secretary of War is hereby directed to have the same inclosed with a good and substantial stone or iron fence; and to cause each grave to be marked with a small headstone or block, which shall be of durable stone, and of such design and weight as shall keep it in place when set, and shall bear the name of the soldier and the name of his State inscribed thereon, when the same are known, and also with the number of the grave inscribed thereon, corresponding with the number opposite to the name of the party in a register of burials to be kept at each cemetery and at the office of the Quartermaster-General, which shall set forth the name, rank, company, regiment, and date of death of the officer or soldier; or if these are unknown, it shall be so recorded.

---

[1] The superintendent of a national cemetery over which the State has ceded jurisdiction to the United States, and within the limits of which he resides, is exempt from the duty devolved by the State upon all male persons between certain ages to work upon the public roads. Otherwise if the State has not ceded jurisdiction, or if the superintendent resides elsewhere within its jurisdiction. XVI Opin. Att. Gen., 468.

Superintendents of national cemeteries are no part of the Army, but civilians, being required indeed by section 4874, Revised Statutes, to be selected from persons who have been honorably discharged from the military service. They are therefore, of course, not subject to the Articles of War or to trial by court-martial, and for any serious misconduct on the part of a superintendent a removal from office would be the only adequate remedy. Dig. Opin. J. A. G., 1767.

Headstones for soldiers' graves in private cemeteries.
Feb. 3, 1879, v. 20, p. 281.

2456. That the Secretary of War is hereby authorized to erect headstones over the graves of soldiers who served in the Regular or Volunteer Army of the United States during the war for the Union, and who have been buried in private village or city cemeteries, in the same manner as provided by the law of March third, eighteen hundred and seventy-three, for those interred in national military cemeteries; and for this purpose, and for the expenses incident to such work, so much of the appropriation of one million dollars, made in the act above mentioned, as has not been expended, and as may be necessary, is hereby made available. *Act of February 3, 1879 (20 Stat. L., 281).*

Records.

2457. The Secretary of War shall cause to be preserved in the records of his Department the names and places of burial of all soldiers for whom such headstones shall have been erected by authority of this or former acts.[1] *Ibid.*

INTERMENTS.

Who may be buried in national cemeteries.
July 17, 1862, c. 200, s. 18, v. 12, p. 596; June 1, 1872, c. 257, v. 17, p. 202; Mar. 3, 1873, c. 276, v. 17, p. 605.
Sec. 4878, R. S.

2458. All soldiers, sailors, or marines, dying in the service of the United States, or dying in a destitute condition, after having been honorably discharged from the service, or who served during the late war, either in the regular or volunteer forces, may be buried in any national cemetery free of cost. The production of the honorable discharge of a deceased man shall be sufficient authority for the superintendent of any cemetery to permit the interment.

Army nurses.
Mar. 3, 1897, v. 29, p. 625.

2459. Army nurses, honorably discharged from their service as such, may be buried in any national cemetery, and, if in a destitute condition, free of cost. The Secretary of War is authorized to issue certificates to those army nurses entitled to such burial. *Act of March 3, 1897 (29 Stat. L., 625).*

Burial of indigent soldiers.
Mar. 3, 1899, v. 30, p. 1108.

2460. For expenses of burying in the Arlington National Cemetery or in the cemeteries of the District of Columbia, indigent ex-Union soldiers, sailors, and marines of the late

---

[1] Provision for carrying this statute into effect has been made in the acts of appropriation of August 4, 1886 (24 Stat. L., 249), March 3, 1887 (24 Stat. L., 534), October 2, 1888 (25 Stat. L., 539), March 2, 1889 (25 Stat. L., 969), August 30, 1890 (26 Stat. L., 400), March 3, 1891 (26 Stat. L., 973), August 5, 1892 (27 Stat. L., 377), March 3, 1893 (27 Stat. L., 599), August 18, 1894 (28 Stat. L., 405), March 2, 1895 (28 Stat. L., 949), June 11, 1896 (29 Stat. L., 443), and subsequent acts of appropriation.

Limitation.

civil war who die in the District of Columbia, to be disbursed by the Secretary of War, at a cost not exceeding forty dollars for such burial expenses in each case, exclusive of cost of grave, three thousand dollars.[1] *Act of March 3, 1899 (30 Stat. L., 1108).*

JURISDICTION, CRIMINAL OFFENSES.

Jurisdiction of United States over national cemeteries.
July 1, 1870, c. 20, s. 1, v. 16, p. 188.
Sec. 4882, R.S.

2461. From the time any State legislature shall have given, or shall hereafter give, the consent of such State to the purchase by the United States of any national cemetery, the jurisdiction and power of legislation of the United States over such cemetery shall in all courts and places be held to be the same as is granted by section eight, article one, of the Constitution of the United States; and all provisions relating to national cemeteries shall be applicable to the same.

Penalty for defacing national cemeteries.
Feb. 22, 1867, c. 61, s. 3, v. 14, p. 400.
Sec. 4881, R.S.

2462. Every person who willfully destroys, mutilates, defaces, injures, or removes any monuments, gravestone, or other structure, or who willfully destroys, cuts, breaks, injures, or removes any tree, shrub, or plant within the limits of any national cemetery, shall be deemed guilty of a misdemeanor, punishable by a fine of not less than twenty-five dollars, and not more than one hundred, or by imprisonment for not less than fifteen days and not more than sixty. The superintendent in charge of any national cemetery is authorized to arrest forthwith any person engaged in committing any misdemeanor herein prohibited, and to bring such person before any United States commissioner or judge of any district or circuit court of the United States within any State or district where any of the cemeteries are situated, for the purpose of holding such person to answer for such misdemeanor, and then and there shall make complaint in due form.[2]

UNITED STATES CEMETERY NEAR THE CITY OF MEXICO.

Cemetery near the City of Mexico.
Mar. 3, 1873, c. 267, v. 17, p. 602.
Sec. 4879, R.S.

2463. The President is authorized to provide, out of the ordinary annual appropriations, for establishing and maintaining United States military cemeteries, for the proper care and preservation and maintenance of the cemetery or burial ground near the City of Mexico, in which are interred the remains of officers and soldiers of the United States, and of citizens of the United States, who fell in battle or died in and around said city.

---

[1] A similar provision occurs in the annual acts of appropriation since that of March 2, 1889 (25 Stat. L., 409).

[2] By section 4881, Revised Statutes, the superintendent of a national cemetery is authorized to arrest persons who injure, etc., gravestones, trees, shrubs, etc., within the cemetery. *Held* that he could not, under this authority, legally arrest a person who fired a gun into or across the cemetery without causing any such injury as is specified in the statute, but, for the arrest and punishment of such a tresspasser, must have recourse to the local authorities. Dig. Opin. J. A. G., par. 1766.

To be subject to what regulations. *Ibid.* Sec. 4880, R.S.

2464. The cemetery in Mexico shall be subject to the rules and regulations affecting United States national military cemeteries within the limits of the United States, so far as they may, in the opinion of the President, be applicable thereto.

ENCROACHMENT BY RAILROADS, ETC.

Encroachments by railroads forbidden. Mar. 2, 1891, v. 28, p. 949.

2465. That no railroad shall be permitted upon the right of way which may have been acquired by the United States to a national cemetery, or to encroach upon any roads or walks constructed thereon and maintained by the United States. *Act of March 2, 1895 (28 Stat. L., 949).*[1]

---

[1] By separate statutes provision has been made for the construction of roads and other approaches as follows: Act of January 20, 1878 (20 Stat. L., 242), and March 3, 1881 (21 Stat. L., 447), at Vicksburg, Miss.; March 3, 1881 (21 Stat. L., 445), August 7, 1882 (22 Stat. L., 319), March 3, 1883 (22 Stat. L., 617), and July 7, 1884 (23 Stat. L., 219), at Chattanooga, Tenn.; March 3, 1881 (21 Stat. L., 447), August 7, 1882 (22 Stat. L., 150), and July 7, 1884 (22 Stat. L., 319), at Fort Scott, Kans.; July 3, 1882 (22 Stat. L., 150), and March 3, 1891 (26 Stat. L., 978), at Mound City, Ill.; March 3, 1883 (22 Stat. L., 617), July 2, 1886, chapter 610 (24 Stat. L., 121), at Chalmette, La.; March 3, 1885 (23 Stat. L., 507), October 2, 1888 (25 Stat. L., 539), and August 30, 1890 (26 Stat. L., 401), at Marietta, Ga.; March 3, 1885 (23 Stat. L., 507), at Baton Rouge, La.; August 4, 1880 (24 Stat. L., 249), and October 2, 1888 (25 Stat. L., 539), at Springfield, Mo.; July 2, 1886 (24 Stat. L., 121), at Natchez, Miss.; July 28, 1886 (24 Stat. L., 159), at Knoxville, Tenn.; February 23, 1887 (24 Stat. L., 416), and March 2, 1889 (25 Stat. L., 969), at Danville, Va.; February 28, 1887 (24 Stat. L., 431), at Richmond, Va.; October 2, 1888 (25 Stat. L., 539), March 2, 1889, chapter 416 (25 Stat. L., 915), August 30, 1890 (26 Stat. L., 401), at Antietam, Md.; August 30, 1890 (26 Stat. L., 401), at Hampton, Va.; March 2, 1889 (25 Stat. L., 969), at Beverly, N. J.; January 8, 1889 (25 Stat. L., 641), at Florence, S. C.; August 30, 1890 (26 Stat. L., 401), roads at Culpeper and Fredericksburg, Va., and a levee at Brownville, Tex.; May 14, 1890 (26 Stat. L., 108), at Port Hudson, La.; April 9, 1890 (26 Stat. L., 46), at Staunton, Va.; March 3, 1891 (26 Stat. L., 978), August 5, 1892 (27 Stat. L., 377), March 3, 1893 (27 Stat. L., 599), August 18, 1894 (28 Stat. L., 405), March 2, 1895 (28 Stat. L., 909), June 11, 1896 (29 Stat. L., 443), July 1, 1898 (30 Stat. L., 634), March 3, 1899 (30 Stat. L., 1108), at the Presidio of San Francisco, Cal.; December 11, 1890 (26 Stat. L., 687), at Alexandria, Va.; July 1, 1898 (30 Stat. L., 634), at Mound City, Ill.; July 1, 1898 (30 Stat. L., 634), at Natchez, Miss.

Held that the title and possession of the United States to and of land situate at El Paso, Texas, duly purchased for cemetery purposes, would properly be protected against a continuous trespass on the part of the municipality in cutting a street through the land, by an injunction sued out in the proper court, the remedy by suit for damages being inadequate.[a] Dig. Opin. J. A. G., par. 2115.

---

[a] 1 Pomeroy, Equity Jurisprudence, sec. 138; 3 ibid., secs. 1347 1356.

CHAPTER XLVI.

FLAG AND SEAL OF THE UNITED STATES.

Par.
2466. The flag to be 13 stripes and 45 stars.
2467. A star to be added for every new State.
2468. Seal of the United States.
2469. Secretary of State to keep and use the seal.

The flag to be 13 stripes and 45 stars.
Jan. 13, 1794, c. 1, v. 1, p. 341; Apr. 4, 1818, c. 34, s. 1, v. 3, p. 415.
Sec. 1791, R. S.

2466. The flag of the United States shall be thirteen horizontal stripes, alternate red and white; and the union of the flag shall be [forty-five] stars, white in a blue field.

A star to be added for every new State.
Apr. 4, 1818, c. 34, s. 2, v. 3, p. 415.
Sec. 1792, R. S.

2467. On the admission of a new State into the Union one star shall be added to the union of the flag; and such addition shall take effect on the fourth day of July then next succeeding such admission.[1]

Seal of the United States.
Sept. 15, 1789, c. 14, s. 3, v. 1, p. 68.
Sec. 1793, R. S.

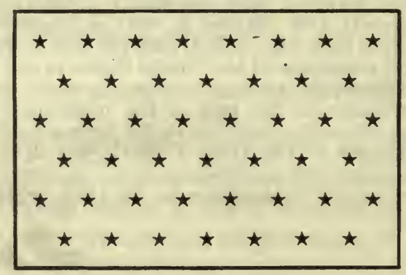
2468. The seal heretofore used by the United States in Congress assembled is declared to be the seal of the United States.

---

[1] The Union of the flag now contains forty-five stars, arranged in accordance with the following order:

War Department, *Washington, March 17, 1896.*

The field or union of the national flag in use in the Army will, on and after July 4, 1896, consist of forty-five stars, in six rows, the first, third, and fifth rows to have eight stars, and the second, fourth, and sixth rows seven stars each, in a blue field, arranged as follows:



Daniel S. Lamont,
Secretary of War.

Held that there was no law precluding an alien residing in the United States, the subject of a foreign government with which we are at peace, from displaying the flag of his country on his dwelling. Dig. Opin. J. A. G., par. 404.

2469. The Secretary of State shall keep such seal, and shall make out and record, and shall affix the same to, all civil commissions for officers of the United States,[1] to be appointed by the President, by and with the advice and consent of the Senate, or by the President alone. But the seal shall not be affixed to any commission before the same has been signed by the President of the United States, nor to any other instrument, without the special warrant of the President therefor.

Secretary of State to keep and use the seal.

Sept. 15, 1789, c. 14, s. 4, v. 1, p. 68; Mar. 18, 1874, c. 57, v. 18, p. 23; Mar. 3, 1875, c. 131, s. 14, v. 18, p. 420.

Marbury *v.* Madison, 1 Cr., 158.

Sec. 1794, R. S.

---

[1] The commissions of military officers now bear the seal of the War Department. Act of March 28, 1896 (29 Stat. L., 75).

CHAPTER XLVII.

THE ARTICLES OF WAR.[1]

LIMITATIONS OF PUNISHMENT.

Section.
1342. Articles of war.
Article.
1. Officers shall subscribe these articles.
2. Articles to be read to recruits.
3. Officers making unlawful enlistments.
4. Discharges.
5. Mustering persons not soldiers.
6. Taking money on mustering.
7. Return of regiments, etc.
8. False returns.
9. Captured stores secured for public service.
10. Accountability for arms, etc.
11. Furloughs.
Article.
12. Musters.
13. False certificates.
14. False muster.
15. Allowing military stores to be damaged.
16. Wasting ammunition.
17. Losing or spoiling horses, accouterments, etc.
18. Commanders not to be interested in sale of victuals, etc.
19. Disrespectful words against the President, etc.
20. Disrespect toward commanding officer.

---

[1] HISTORICAL NOTE.

In the early periods of English history military law existed only in time of actual war. When war broke out troops were raised as occasion required, and ordinances for their government, or, as they were afterwards called, Articles of War, were issued by the Crown, with the advice of the constable or of the peers or other experienced persons, or were enacted by the commander in chief in pursuance of an authority for that purpose given in his commission from the Crown. (*a*)

These ordinances or articles, however, remained in force only during the service of the troops for whose government they were issued, and ceased to operate on the conclusion of peace. Military law in time of peace did not come into existence until the passing of the first mutiny act in 1689.

The system of governing troops in active service by articles of war, issued under the prerogative power of the Crown, whether issued by the King himself, or by the commanders in chief, or by other officers holding commissions from the Crown, continued from the time of the Conquest till long after the passing of the annual mutiny acts, (*b*) and did not actually cease till the prerogative power of issuing such articles was superseded in 1803 by a corresponding statutory power. (*c*)

The earlier articles were of excessive severity, inflicting death or loss of limb for almost every crime. Gradually, however, they assumed something of the shape which they bear in modern times, and the ordinances or articles of war issued by Charles I in 1672 formed the groundwork of the Articles of War of 1878, which were consolidated with the mutiny act in the army discipline and regulation act of 1879, which was replaced by the army act of 1881. The army act of 1881, which now constitutes the military code of the British army, has of itself no force, but requires to

---

a Grose, Military Antiquities, vol. 2, p. 58.
b Barwis *v.* Keppel, 2 Wilson's Rep., 314.
c 43 Geo. III, chapter 20.

Article.
21. Striking superior officer.
22. Mutiny.
23. Failing to resist mutiny.
24. Quarrels and frays.
25. Reproachful or provoking speeches.
26. Challenges to fight duels.
27. Allowing persons to go out and fight; seconds and promoters.
28. Upbraiding another for refusing challenge.
29. Wrongs to officers, redress of.
30. Wrongs to soldiers, redress of.
31. Lying out of quarters.
32. Soldiers absent without leave.
33. Absence from parade without leave.
34. One mile from camp without leave.
35. Failing to retire at retreat.
36. Hiring duty.
37. Conniving at hiring duty.
38. Drunk on duty.
39. Sentinel sleeping on post.
40. Quitting guard, etc., without leave.
41. False alarms.
42. Misbehavior before the enemy, cowardice, etc.
43. Compelling a surrender.
44. Disclosing watchword.
45. Relieving the enemy.

Article.
46. Corresponding with the enemy.
47. Desertion.
48. Deserter shall serve full term.
49. Desertion by resignation.
50. Enlisting in other regiment without discharge.
51. Advising to desert.
52. Misconduct at divine service.
53. Profane oaths.
54. Officers to keep good order in their commands.
55. Waste or spoil and destruction of property without orders.
56. Violence to persons bringing provisions.
57. Forcing a safeguard.
58. Certain crimes during rebellion.
59. Offenders to deliver up to civil magistrates.
60. Certain crimes of fraud against the United States.
61. Conduct unbecoming an officer and gentleman.
62. Crimes and disorders to prejudice of military discipline.
63. Retainers of camp.
64. All troops subject to Articles of War.
65. Arrest of officers accused of crimes.

be brought into operation annually by another act of Parliament, thus securing the constitutional principle of the control of the Parliament over the discipline requisite for the government of the army. (*a*)

The Rules and Articles of War were derived originally from the English mutiny act and articles of war under the following circumstances: In May, 1775, the Continental Congress met in Philadelphia and at once proceeded to levy and organize an army. A system of rules for its government was, of course, indispensable. The members of this Congress were naturally familiar with the English military code. The local troops serving with the English forces sent to this country in 1754 had been brought under the mutiny act, while the armies of Gage and Burgoyne were governed by the English code at the time the first "Continental troops" were raised. It was but natural, therefore, that this body should turn to the mutiny act as a model, and on June 30, 1775, the Congress promulgated articles, 69 in number, for the government of the Continental troops. These articles were adopted from the English, in the same form as our present articles, modified, however, to meet the milder views which were entertained by a people who entertained an objection to a standing army. Additions were made in November of this year, but were repealed by the act of September 30, 1776, and new articles adopted. These articles, 102 in number, were modeled upon the British form and were arranged in 18 sections. With some modifications they remained in force until 1806.

In September, 1789, they were formally recognized and adapted to the new Constitution by the First Congress of the United States. In 1806 the articles, 101 in number, were rearranged and promulgated by Congress; (*b*) the divisions into sections were dropped and the old model substituted. These, with five or six modifications, remained in force for nearly seventy years, and were the governing code of the Army until the passage of the act of June 22, 1874 (*c*) (18 Stat. L., 113). These articles are embodied in the Revised Statutes as sections 1342 and 1343 of that work.

---

[a] Manual of Military Law, War Office, Pall Mall, 1884, pp. 9–18.
[b] Act of April 10, 1806 (2 Stat. L., p. 359).
[c] Ives, Mil. Law, p. 17.

Article.
66. Soldiers accused of crimes.
67. Receiving prisoners.
68. Report of prisoners.
69. Releasing prisoner without authority; escapes.
70. Duration of confinement.
71. Copy of charges and time of trial.
72. Who may appoint general courts-martial.
73. Commanders of divisions and separate brigades may appoint in time of war.
74. Judge-advocate.
75. Members of general courts-martial.
76. When requisite number not at a post.
77. Regular officers, on what courts may sit.
78. Marine and Regular Army officers associated on courts.
79. Officers triable by general courts-martial.
80. The summary court.
81. Regimental courts.
82. Garrison courts.
83. Jurisdiction of field officers', regimental, and garrison courts.
84. Oath of members of courts-martial.
85. Oath of judge-advocate.
86. Contempts of court.
87. Behavior of members.
88. Challenges by prisoner.
89. Prisoner standing mute.
90. Judge-advocate, prosecutor and counsel for prisoner.
91. Depositions.
92. Oath of witness.
93. Continuances.
95. Order of voting.
96. Sentence of death.
97. Penitentiaries.
98. Flogging.
99. Discharge and dismissal of officers.
100. Publication of officers cashiered for cowardice or fraud.
101. Suspension of officers' pay.
102. No person tried twice for same, etc.

Article.
103. Limitation of time of prosecution.
104. Approval of sentence by officer ordering court.
105. Confirmation of death sentence.
106. Confirmation of dismissals in time of peace.
107. Dismissal by division or brigade courts.
108. General officers, sentences respecting.
109. Confirmation by officer ordering court.
110. Confirmation of field officers' sentences.
111. Suspension of sentence of death or dismissal.
112. Pardon and mitigation of sentences.
113. Proceedings forwarded to judge-advocate-general.
114. Party entitled to a copy.
115. Courts of inquiry, how ordered.
116. Members of court of inquiry.
117 Oaths of members and recorder of court of inquiry.
118. Witnesses before courts of inquiry.
119. Opinion, when given by.
120. Authentication of proceedings of court of inquiry.
121. Proceedings of court of inquiry used as evidence.
122. Command when different corps happen to join.
123. Regular and volunteer officers on same footing as to rank, etc.
124. Rank of militia officers on duty with officer of regular or volunteer forces.
125. Deceased officers' effects.
126. Deceased soldiers' effects.
127. Effects of deceased officers and soldiers to be accounted for.
128. Articles of War to be published once in six months to every regiment, etc.

Section.
1343. Spies.

Articles of War. Limits of punishment.
Apr. 10, 1806, c. 20, v. 2, p. 359; 27 Sept., 1890, v. 26, p. 491.
Sec. 1342, R. S.

SECTION 1342. The armies of the United States shall be governed by the following rules and articles. The word officer, as used therein, shall be understood to designate commissioned officers; the word soldier shall be understood to include noncommissioned officers, musicians, artificers, and privates, and other enlisted men, and the convictions mentioned therein shall be understood to be convictions by court-martial.[1] *Sec. 1342, R. S.*

That whenever by any of the Articles of War for the government of the Army the punishment on conviction of any military offense is left to the discretion of the court-martial, the punishment therefor shall not, in time of peace, be in excess of a limit which the President may prescribe.[2] *Act of September 27, 1890 (26 Stat. L., 491).*

Officers shall subscribe these articles.
1 Art. War.

Article 1. Every officer now in the Army of the United States shall within six months from the passing of this act, and every officer hereafter appointed shall before he enters upon the duties of his office, subscribe these rules and articles.

Articles to be read to recruits.
2 Art. War.
Jan. 29, 1813, c. 16, s. 13, v. 2, p. 796; Aug. 3, 1861, c. 42, s. 11, v. 12, p. 289.
3 Art. War.

Art. 2. These rules and articles shall be read to every enlisted man at the time of or within six days after his enlistment, and he shall thereupon take an oath or affirmation in the following form: "I, A. B., do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States of America; that I will serve them honestly and faithfully against all their enemies whomsover, and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to the rules and articles of war." This oath may be taken before any commissioned officer of the Army.[3]

---

[1] The Army and Navy of the United States are engaged in the performance of public, not private, duties. Service in the army or navy of one's country, according to the terms of the enlistment, never implies slavery or involuntary servitude, even where the soldier or sailor is required against his will to respect the terms upon which he voluntarily engaged to serve the public. Involuntary service rendered for the public, pursuant as well to the requirements of a statute as to a previous voluntary engagement, is not, in any legal sense, either slavery or involuntary servitude. (Robertson *v.* Baldwin, 165 U. S., 275, 299.) (Dissenting opinion of Justice Harlan.)

[2] Under the authority conferred by this statute two executive orders have been issued prescribing limits of punishment for offenses to which specific penalties are not attached in the Articles of War. See G. O. No. 21, A. G. O. of 1891, as modified by the executive order of March 20, 1895 (Manual for Courts-Martial, pp. 59–63).

[3] The taking of the oath prescribed by this article is not an essential to the validity of an enlistment. It is, however, an almost invariable part of a regular formal enlistment, and in the absence of any provision in our law defining in what an enlistment shall consist, it is important that it should not be omitted for the reason that the oath as taken and subscribed by the party constitutes the regular and in some cases the only legal written evidence that the personal act of enlisting has been completed by him. Dig. Opin. J. A. G., par. 1251. But see Grimley's case (137 U. S., 147), in which it was held that the oath of allegiance was the pivotal fact which changed the status from that of civilian to soldier. Section 11 of the act of August 3, 1861 (12 Stat. L., 289), conferred authority to administer the oath of allegiance upon any commissioned officer of the Army.

The statement in regard to age, incorporated in the printed blank which contains the form of oath prescribed by this article, is no part whatever of the legal oath. Dig. Opin. J. A. G., par. 19.

By direction of the Secretary of War, such of the Articles of War as relate specially to the duties and rights of enlisted men and the penalties for military crimes will be plainly read, and so far as necessary, explained to each recruit just before administering to him the oath of enlistment. G. O. 210, A. G. O., 1899.

Officers making unlawful enlistments.
3 Art. War.
Mar. 5, 1833, c. 68, s. 6, v. 4, p. 647; Mar. 3, 1863, c. 75, s. 2, v. 12, p. 731; July 4, 1864, c. 237, s. 5, v. 13, p. 380; Mar. 3, 1865, c. 79, s. 18, v. 13, p. 490; May 15, 1872, c. 162, s. 2, v. 17, p. 117.

ART. 3. Every officer who knowingly enlists or musters into the military service any minor over the age of sixteen years without the written consent of his parents or guardians, or any minor under the age of sixteen years, or any insane or intoxicated persons, or any deserter from the military or naval service of the United States, or any person who has been convicted of any infamous criminal offense shall, upon conviction, be dismissed from the service or suffer such other punishment as a court-martial may direct.[1]

Fraudulent enlistment.
July 27, 1892, s. 3, v. 27, p. 277.

Fraudulent enlistment, and the receipt of any pay or allowance thereunder, is hereby declared a military offense and made punishable, by a court-martial, under the sixty-second Article of War.[2] *Sec. 3, act of July 27, 1892 (27 Stat. L., 277).*

Discharges.
4 Art. War.

ART. 4. No enlisted man, duly sworn, shall be discharged from the service without a discharge in writing, signed by a field officer of the regiment to which he belongs, or by the commanding officer, when no field officer is present:

---

[1] Neither this article nor the directory provision *in pari materia* of sections 1117–1118, Revised Statutes, renders void enlistments of the classes of persons whose enlistment or muster-in is made punishable and interdicted. Except, of course, in the case of an enlistment of a person clearly non compos mentis, and whose contract is a nullity in law independently of any statute, these enlistments are voidable only; the United States may hold the party to service or may discharge him forthwith in the manner authorized by the fourth article. Ibid., 20, par. 1.

It is not essential to a conviction under this article that the officer shall be shown to have had positive and absolute knowledge that the person enlisted by him belonged to one of the classes of persons whose enlistment is made an offense. If he had such knowledge or information as to place the fact beyond a reasonable doubt he may properly be deemed to have acted "knowingly." Ibid., par. 2.

The enlistment of a party who was evidently so much under the influence of liquor as to make it doubtful whether he comprehended the legal effect of his acts, *held* an enlistment of an "intoxicated person" and an offense under this article. Ibid., par. 3.

[2] This offense (constituted and made punishable as a violation of article 62, by section 3 of the act of July 27, 1892, c. 272) is defined in Circular No. 13 (A. G. O.), 1892. The misrepresentation or concealment characterizing it must have induced the enlistment of the soldier, and must have related to a fact which, if known, would have caused his rejection. Where the offense consisted in his having concealed the fact that he had been discharged with a questionable character—viz, "very good except when intoxicated, then bad"—*held* that such offense was chargeable as "fraudulent enlistment," provided the knowledge of this fact on the part of the recruiting officer would have prevented the enlistment. Dig. Opin. J. A. G., par. 1412.

A fraudulently enlisting soldier may be disposed of in either of two ways, viz, he may be brought to trial for his offense under the statute or he may be discharged "without honor." If brought to trial and convicted, and his sentence does not include dishonorable discharge (as it need not do under the order prescribing a maximum punishment for this offense), *held* that the Government could not properly also summarily discharge him. While it might have resorted to either course, it would scarcely be just to subject the offender to both. Ibid., par. 1413.

A fraudulent contract of enlistment is not void, but voidable only at the option of the Government. The Government, on becoming cognizant of the fraud, may avoid the contract, or waive the objection and allow it to stand—in which latter case the accepted service is as legal as that of any other soldier. Where the fraudulent character of an enlistment contract did not become known until after a part of it had been executed, *held* that while the same as to its unexecuted portion might legally then be avoided and terminated, yet as to the part executed it was a valid contract, and the soldier could not lawfully be required to refund money paid for that part. Ibid., par. 1414.

and no discharge shall be given to an enlisted man before his term of service has expired, except by order of the President, the Secretary of War, the commanding officer of a department, or by sentence of a general court-martial.[1]

---

[1] While no soldier can assume to discharge himself from the military service, he is yet, at the expiration of his contract of enlistment, entitled in general to be at once formally discharged by the proper authority. (*a*) In view, however, of the terms of the first clause of this article, *held* that a discharge of a soldier actually takes effect, like a deed, only upon the delivery, actual or constructive, of the written certificate of discharge. Thus, where a soldier's discharge was not received by him at his station—a hospital in the field—till at the end of three months after its date, *held* that it did not take effect till its receipt, and that the soldier was entitled to pay up to that time. Dig. Opin. J. A. Gen., 20, par. 1.

A formal discharge, given to a soldier in accordance with this article, is legal evidence of the fact of discharge, as well as of the circumstances—when the same are stated—under which the soldier was separated from the service. (*b*) Ibid., 21, par. 2.

Where an honorable discharge has once duly taken effect by the delivery of the formal certificate (see art. 4, sec. 1), it is final and can not be revoked unless obtained by *fraud.* (*c*) But in such a case the revocation should be made within a reasonable time, otherwise the Government will be deemed to have waived the defect. A mere *order for a discharge* may, of course, be recalled or suspended at any time before it is executed by the delivery of the discharge ordered. Where an officer of volunteers had been duly mustered out of service—a form of honorable discharge—and was thus a civilian, *held* that a revocation in orders of his muster out, and a substitution therefor of a dishonorable discharge, would—in the absence of any fraud in the case—be wholly unauthorized and illegal. Ibid, 355, par. 1.

Where a soldier, by making an alteration in his "descriptive list," so as to cause it to appear that his term of enlistment, which was in fact five years, was three years only, induced the regimental commander to give him an honorable discharge at the end of three years' service, *held*, upon the fraud being presently discovered, that the discharge might legally be revoked and the soldier be brought to trial by court-martial under the ninety-ninth (now sixty-second) article of war. But where, by competent authority, according to the present fourth article, an honorable discharge was given to a soldier who was at the time in arrest under charges, *held* that such discharge—no fraud being imputable to the soldier—was final, and could not legally be revoked. Ibid, par. 1142.

The fact that a soldier has been a deserter does not affix an irreparable taint upon his status or service when returned from desertion, or preclude his receiving an honorable discharge, if either he be restored to duty without trial, or having been tried and sentenced, he yet, by reason of his imprisonment being fully executed or being remitted before the end of his term, is returned to duty and is in the performance of faithful service when his term is completed. A discharge in the usual form then given to him, is an authoritative declaration by it that he leaves the military service in a status of honor. Thus honorably discharged, he can not, by reason of his having formerly deserted, be deprived of any rights to pay, allowances, or bounty usually incident upon honorable discharge. (*d*) Ibid, 356, par. 4.

This article, in its second clause, specifies two kinds of discharge as authorized to be given to soldiers before their terms of enlistment have expired, and which are quite distinct in their nature. The one is given by Executive order and the other by sentence; the one is a rescinding of the contract of the soldier, authorized to be resorted to whenever deemed desirable, at the discretion of the Secretary of War, etc., and is, in law, an honorable discharge or a discharge without honor, as the case may be; the other is a punishment, and therefore a dishonorable discharge. One of the officials named can, of his own authority, no more order a soldier to be, in terms technically, dishonorably discharged than can a court-martial adjudge a soldier to be honorably discharged. A discharge can not legally be given a soldier before the expiration of his term of service except as authorized in this article; and no officer, other than the three designated, can exercise the authority, expressly devolved upon them, of discharging by order. (*e*) Ibid., 21, par. 3.

---

[a] See Justice Story's charge to the jury in United States *v.* Travers, 2 Wheeler Cr. C., 509; also Prendergast, 42.

[b] See Board of Commissioners *v.* Mertz, 27 Ind., 103; Hanson *v.* S. Scituate, 115 Mass., 336; U. S. *v.* Wright, 5 Philad., 296.

[c] See opinion of the Attorney-General, in XVI Opins., 352, in which it was held that an honorable discharge obtained by gross falsehood and fraud was revocable by the Secretary of War.

[d] See United States *v.* Kelly, 15 Wallace, 36.

[e] III Opin. Att. Gen., 353.

Mustering persons not soldiers.
5 Art. War.

ART. 5. Any officer who knowingly musters as a soldier a person who is not a soldier shall be deemed guilty of knowingly making a false muster, and punished accordingly.

Taking money on mustering.
6 Art. War.

ART. 6. Any officer who takes money, or other thing, by way of gratification, on mustering any regiment, troop, battery, or company, or on signing muster-rolls, shall be dismissed from the service, and shall thereby be disabled to hold any office or employment in the service of the United States.

Returns of regiments, etc.
7 Art. War.

ART. 7. Every officer commanding a regiment, an independent troop, battery, or company, or a garrison, shall, in the beginning of every month, transmit through the proper channels, to the Department of War, an exact return of the same, specifying the names of the officers then absent from their posts, with the reasons for and the time of their absence. And any officer who, through neglect or design, omits to send such returns, shall, on conviction thereof, be punished as a court-martial may direct.

False returns.
8 Art. War.

ART. 8. Every officer who knowingly makes a false return to the Department of War, or to any of his superior officers authorized to call for such returns, of the state of the regiment, troop, or company, or garrison under his command; or of the arms, ammunition, clothing, or other stores thereunto belonging, shall, on conviction thereof before a court-martial, be cashiered.[1]

Captured stores secured for public service.
9 Art. War.

ART. 9. All public stores taken from the enemy shall be secured for the service of the United States; and for neglect thereof the commanding officer shall be answerable.[2]

---

[1] This article refers only to returns made by certain commanders as such. It is only as commander of a regiment, company, or garrison that an officer can be made amenable to a charge under the article. An officer not exercising one of these commands is not within its terms. (*a*) Dig. Opin. J. A. Gen., par. 1.

In 1872 an officer of the line of the Army, on duty as post quartermaster at Paducah, Ky., was tried for a violation of this article in making false returns of the property for which he was responsible, and was convicted. As the article applies exclusively to officers exercising the specific commands named in the statute, and as the officer in this exercised no one of the commands so specified, the findings under the eighth article were disapproved by the reviewing authority. Gen. Court-Martial Orders, No. 12, War Dept., 1872. See, also, G. C. M. O., No. 19, War Dept., 1872.

An officer "knowingly makes a false return" under this article who makes a return which he knows to be untrue in any material particular. Ibid, 22, par. 2.

The "returns" indicated in the article can scarcely be said to include returns of funds, what is contemplated being mainly returns of the personnel or materiel of the command. A false return of a company fund would more properly be charged under another article, as the sixty-first or sixty-second. Ibid, par. 2.

[2] The title to property captured from an enemy in war vests, at the instant of capture, in the captor's Government, which may make such disposition of it as it may deem expedient. The policy and practice of the United States, as to the property captured on land, has been to retain it for governmental uses or to sell it and convert

---

a See G. C. M. O. 12, 19, War Department, 1872.

Accountability for arms, etc.
10 Art. War.

Art. 10. Every officer commanding a troop, battery, or company, is charged with the arms, accouterments, ammunition, clothing, or other military stores belonging to his command, and is accountable to his colonel in case of their being lost, spoiled, or damaged otherwise than by unavoidable accident, or on actual service.

Furloughs.
Mar. 3, 1863, c. 75, s. 32, v. 12, p. 736.
11 Art. War.

Art. 11. Every officer commanding a regiment or an independent troop, battery, or company, not in the field, may, when actually quartered with such command, grant furloughs to the enlisted men, in such numbers and for such time as he shall deem consistent with the good of the service. Every officer commanding a regiment, or an independent troop, battery, or company, in the field, may grant furloughs not exceeding thirty days at one time, to five per centum of the enlisted men, for good conduct in the line of duty, but subject to the approval of the commander of the forces of which said enlisted men form a part. Every company officer of a regiment, commanding any troop, battery, or company not in the field, or commanding in any garrison, fort, post, or barrack, may, in the absence of his field officer, grant furloughs to the enlisted men, for a time not exceeding twenty days in six months, and not to more than two persons to be absent at the same time.

Musters.
12 Art. War.

Art. 12. At every muster of a regiment, troop, battery, or company, the commanding officer thereof shall give to the mustering officer certificates, signed by himself, stating how long absent officers have been absent and the reasons of their absence. And the commanding officer of every troop, battery, or company shall give like certificates, stating how long absent noncommissioned officers and private

---

the proceeds to its own use. See the "Captured and abandoned property act" (act of March 12, 1863), in the chapter entitled EMPLOYMENT OF MILITARY FORCE, ETC.

This provision is in accordance with the principle of the law of nations and of war, that enemy's property duly captured in war becomes the property of the government or power by whose forces it is taken, and not that of the individuals who take it.(*a*) "Private persons can not capture for their own benefit."(*b*) Military stores taken from the enemy, becoming upon capture the property of the United States, Congress, which by the Constitution(*c*) is exclusively vested with the power to dispose of the public property, as well as to make rules concerning captures on land and water, can alone authorize the sale or transfer of the same. An officer or soldier of the Army who assumes of his own authority to appropriate such articles renders himself chargeable with a military offense.(*d*) Ibid, par. 3.

---

[a] U. S. *v.* Klein, 13 Wallace, 136; Decatur *v.* U. S., Devereux, 110; White *v.* Red Chief, 1 Woods, 40: Branner *v.* Felkner, 1 Heisk., 232; Worthy *v.* Kinamon, 44 Ga., 299; Huff *v.* Odom, 49 ibid., 395; XIII Opin. Att. Gen., 105; Hough (Practice), 329, 330; G. O. 54, Headquarters of Army, Mexico, 1848; G. O. 21, War Department, 1848; G O. 64, 107, ibid., 1862. And see also Lamar *v.* Browne, 2 Otto, 195, in regard to the same principle as illustrated by the captured and abandoned property act of March 12, 1863.

[b] Worthy *v.* Kinamon, *supra.*

[c] Article I, section 8, paragraph 11; Article IV, section 3, paragraph 2.

[d] See, in this connection, section 5313, Revised Statutes.

soldiers have been absent and the reasons of their absence. Such reasons and time of absence shall be inserted in the muster rolls opposite the names of the respective absent officers and soldiers, and the certificates, together with the muster rolls, shall be transmitted by the mustering officer to the Department of War, as speedily as the distance of the place and muster will admit.

False certificates.
13 Art. War.

ART. 13. Every officer who signs a false certificate, relating to the absence or pay of an officer or soldier, shall be dismissed from the service.[1]

False muster.
14 Art. War.

ART. 14. Any officer who knowingly makes a false muster of man or horse, or who signs, or directs, or allows the signing of any muster roll, knowing the same to contain a false muster, shall, upon proof thereof by two witnesses, before a court martial, be dismissed from the service, and shall thereby be disabled to hold any office or employment in the service of the United States.[2]

Allowing military stores to be damaged.
Mar. 2, 1863, c. 67, s. 1, v. 12, p. 696.
15 Art. War.

ART. 15. Any officer who, willfully or through neglect, suffers to be lost, spoiled, or damaged, any military stores belonging to the United States, shall make good the loss or damage, and be dismissed from the service.

Wasting ammunition.
16 Art. War.

ART. 16. Any enlisted man who sells, or willfully or through neglect wastes the ammunition delivered out to him, shall be punished as a court-martial may direct.

Selling horse, etc., to be punished by court-martial.
July 27, 1892, v. 27, p. 277.
17 Art. War.

ART. 17. Any soldier who sells or through neglect loses or spoils his horse, arms, clothing, or accouterments shall be punished as a court-martial may adjudge, subject to such limitations as may be prescribed by the President by virtue of the power vested in him.[3]

---

[1] *Held* that the mere signing by an officer of a voucher for his pay before the last day of the month for which it was due did not constitute an offense of the class intended to be made punishable by this article. (*a*) Dig. Opin. J. A. Gen., par. 4.

[2] For a case in which an officer was convicted of false muster (although the offense was erroneously charged under the sixty-first article) see G. O., 183, A. G. O., 1863.

[3] This article is quite independent of the regulations contained in article 60, Army Regulations, relating to boards of survey. The latter pass upon questions of pecuniary responsibility for the loss, etc., of public property. The court-martial, under this article, simply imposes punishment. (*b*) Ibid., par. 5.

The description, "his clothing," refers to articles which are regularly issued to the soldier for his use in the service and with the safe-keeping of which he is charged. His property in them is qualified by the trust that he can not dispose of them while he is in the military service, and can only use them for military purposes. Ibid., par 6.

Improper dispositions of property in the charge and use of soldiers, other than the dispositions indicated in this article, will in general properly be charged under article 62. Likewise the selling, through neglect losing, etc., by soldiers, of property issued to them, but not mentioned in article 17, should be charged under article 62. Thus *held* that a selling or losing of the following articles was not punishable under

---

a See G. C. M. O., 28, War Department, 1872.

b Where a trial is had, the proceedings of a board of survey, already ordered in the same case, will not be competent evidence to prove the fact of the loss, etc., charged. G. C. M. O., 45, Department of the Missouri, 1877; G. C. M. O., 15, Department of Texas, 1877.

Commanders not to be interested in sale of victuals, etc.
18 Art. War.

ART. 18. Any officer commanding in any garrison, fort, or barracks of the United States who, for his private advantage, lays any duty or imposition upon, or is interested in, the sale of any victuals, liquors, or other necessaries of life, brought into such garrison, fort, or barracks, for the use of the soldiers, shall be dismissed from the service.

Disrespectful words against the President, etc.
19 Art. War.

ART. 19. Any officer who uses contemptuous or disrespectful words against the President, the Vice-President, the Congress of the United States, or the chief magistrate or legislature of any of the United States in which he is quartered, shall be dismissed from the service, or otherwise punished, as a court-martial may direct. Any soldier who so offends shall be punished as a court-martial may direct.[1]

---

article 17, but under article 62, viz, sheets, pillows, pillowcases, mattress covers, shelter tent, barrack bag, greatcoat strap, tin cup, spoon, knife, fork, meat-ration can, cartridges. Ibid., par. 8.

Only three offenses are made punishable by this article—selling, through neglect losing, and through neglect spoiling the property named therein. Any other form of wrongful disposition should be made the subject of a charge under article 60 or article 62. Ibid., par. 7.

"Unlawfully disposing of" (or "otherwise unlawfully disposing of") clothing, arms, etc., is not a proper form for the charge under this article. A charge under this article should not be expressed in the alternative—as that the accused "sold" or "through neglect lost." The selling, through neglect losing, and through neglect spoiling, are distinct offenses and are to be so charged. Ibid., par. 9, 10.

Clothing issued and charged to a soldier is not now (as it was formerly) regarded as remaining the property of the United States. It is now considered as becoming, upon issue, the property of the soldier, although his use of it is, for purposes of discipline, qualified and restricted. Thus, he commits a military offense by disposing of it as specified in this article, though the United States may suffer no loss. Ibid., par. 11.

The present seventeenth article (as amended by the act of July 27, 1892) does not authorize a stoppage or forfeiture of pay to reimburse the United States. The stoppage which was enjoined by the old form of the article is dropped entirely from the present statute. This provides for punishment only—does not provide any means of reimbursing the appropriation out of which the lost, etc., property was paid for, or of repairing the loss or damage as such. So *held* (April, 1893) that a sentence, upon a conviction under this article, which adjudged a stoppage of pay "to reimburse the United States for the value of the clothing alienated" was unauthorized and inoperative. Ibid., par. 12.

[1] When a trial of an officer or soldier has been resorted to under this article, it has usually been on account of the use of "contemptuous or disrespectful words against the President," or the Government mainly as represented by the President. The deliberate employment of denunciatory or contumelious language in regard to the President, whether spoken in public, or published, or conveyed in a communication designed to be made public, has, in repeated cases, been made the subject of charges and trial under this article; (*a*) and, where taking the form of a hostile arraignment, by an officer, of the President or his Administration, for the measures adopted in carrying on the late war—a juncture when a peculiar obedience and deference were due, on the part of the subordinate, to the President as Executive and Commander in Chief—was in general punished by a sentence of dismissal. On the other hand, it was *held* that adverse criticisms of the acts of the President, occurring in political discussions, and which, though characterized by intemperate language, were not apparently intended to be disrespectful to the President personally or to his office, or to excite animosity against him, were not in general to be regarded as properly exposing officers or soldiers to trial under this article. To seek, indeed, for ground of offense in such discussions would ordinarily be inquisitorial and beneath the dignity of the Government. Dig. Opin., J. A. G., par. 13.

---

[a] See cases in G. C. M. O. 43, War Department, 1863; G. O. 171, Army of the Potomac, 1862; G. O. 23, ibid., 1863; G. O. 52, Middle Department, 1863; G. O. 119, Department of the Ohio, 1863; G. O. 33, Department of the Gulf, 1863; G. O. 68, Department of Washington, 1864; G. O. 86, Northern Department, 1864; G. O. 1, ibid., 1865; G. O. 29, Department of North Carolina, 1865.

Disrespect toward commanding officer. 20 Art. War.

ART. 20. Any officer or soldier who behaves himself with disrespect toward his commanding officer shall be punished as a court-martial may direct.[1]

Striking a superior officer. 21 Art. War.

ART. 21. Any officer or soldier who, on any pretense whatsoever, strikes his superior officer, or draws or lifts up any weapon, or offers any violence against him, being in the execution of his office, or disobeys any lawful command of his superior officer, shall suffer death, or such other punsishment as a court-martial may direct.[2]

---

[1] The disrespect here indicated may consist in acts or words; (*a*) and the particular acts or words relied upon as constituting the offense should properly be set forth in substance in the specification. (*b*) It must be shown in evidence under the charge that the officer offended against was the "commanding officer" of the accused. (*c*) The commanding officer of an officer or soldier in the sense of this article is properly the superior who is authorized to require obedience to his orders from such officer or soldier, at least for the time being. Thus where a battalion was temporarily detached from a regiment and placed under the orders of the commander of a portion of the Army distinct from that in which the main part of the regiment was included, *held* that it was the commander of this portion who was the commanding officer of the detachment, and that the use by an officer of such detachment of disrespectful language in reference to the regimental commander (who had remained with and in command of the main body of the regiment) was properly chargeable not under this article, but rather under the sixty-second. Ibid., par. 14.

Held that disrespectful language used in regard to his captain by a soldier when detached from his company and serving at a hospital, to the surgeon in charge of which he has been ordered to report for duty, was an offense cognizable by court-martial not under this article, but under article 62. Ibid., par. 15.

[2] To justify a conviction of the capital offense of offering violence against a superior officer, it should be made to appear in evidence that the accused knew or believed that the person assaulted was in fact an officer in the Army and was his "superior" in rank. (*d*) Ibid., par. 17.

Under a charge of a violation of this article in offering violence to a superior officer, it should be alleged and proved that the officer assaulted was at the time "in the execution of his office." Ibid., par. 18.

In charging a striking or doing of violence to a superior officer under this article, in a case where the assault was fatal, it was allowable to add in the specification, "thereby causing his death," as indicating the measure of violence employed. Ibid., par. 19.

The "superior officer" in the sense of this article need not necessarily have been the commanding officer of the accused at the time of the offense. The article is thus broader than article 20, which relates only to an offense against a commanding officer. Ibid., par. 20.

"The first duty of a soldier is obedience, and without this there can be neither discipline nor efficiency in an army." McCall *v.* McDowell, 15 Fed. Cas., 1235.

"To insure efficiency an army must be, to a certain extent, a despotism. Each officer * * * is invested with an arbitrary power over those beneath him, and the soldier who enlists in the army waives, in some particulars, his rights as a civilian, surrenders his personal liberty during the term of his enlistment, and consents to come and go at the will of his superior officers. He agrees to become amenable to the military courts, to be disciplined for offenses unknown to the civil law, to relinquish his right of trial by jury, and to receive punishments which, to the civilian, seem out of all proportion to the magnitude of the offense." U. S. *v.* Clarke, 3 Fed. Rep., 713—Brown, J.

"An army is not a deliberative body. It is the executive arm. Its law is that of obedience. No question can be left open as to the right to command in the officer, or the duty of obedience in the soldier. Vigor and efficiency on the part of the officer

[a] G. O. 44, Department of Dakota, 1872. And see G. C. M. O. 28, War Department, 1875; G. O. 47, Department of the Platte, 1870.

[b] G. C. M. O. 35, Department of the Missouri, 1872.

[c] G. O. 53, Department of Dakota, 1871.

[d] See G. O. 34, Department of Virginia, 1863.

and confidence among the soldiers in one another are impaired if any question be left open as to their attitude to each other." In re Grimley, 137 U. S., 153.

The offense of disobedience of orders contemplated by this article consists in a refusal or neglect to comply with a specific order to do or not to do a particular thing. A mere failure to perform a routine duty is properly charged under article 62.[a] Where an officer neglected fully to perform his duty under general instructions given him in regard to the conduct of an expedition against Indians, *held* that his offense was properly chargeable not under the twenty-first, but under the sixty-second article. Dig. Opin., J. A. G., par. 25.

The fact that any stated duty is enjoined in regulations or orders does not in itself render a nonperformance of such duty a disobedience of orders in violation of the twenty-first article; but to support this charge it is essential that there should be shown an intentional disregard of authority as is evinced by a willful refusal or omission to comply with the specific command of a superior officer. G. C. M. O. 26, War Dept., 1872.

A noncompliance by a soldier with an order emanating from a noncommissioned officer, or offering violence to the latter is not an offense under this article, but one to be charged, in general, under the sixty-second.[b] Dig. Opin., J. A. G. par. 21.

Under a charge of a disobedience of the order of a superior officer in violation of this article, it should be alleged, and should appear from the evidence introduced, that the order or "command" was "lawful." An officer or soldier is not punishable under this article for disobeying an unlawful order. But the order of a proper superior is to be presumed to be lawful, and should be obeyed, where it is not clearly and obviously in contravention of law. Unless the illegality is unquestionable, he should obey first and seek redress, if entitled to any, afterwards. A military inferior in refusing or failing to comply with the order of a superior on the ground that the same is, in his opinion, unlawful does so, of course, on his own personal responsibility and at his own risk. Ibid., par. 22.

To justify, from a military point of view, a military inferior in disobeying the order of a superior, the order must be one requiring something to be done which is palpably a breach of law and a crime or an injury to a third person, or is of a serious character (not involving unimportant consequences only) and if done would not be susceptible of being righted. An order requiring the performance of a *military* duty or act can not be disobeyed with impunity unless it has one of these characters. If not triable under the twenty-first article, such disobedience may be tried under the sixty-second. In the *Cedarquist* case it was held by the Judge-Advocate-General that "there could be no more dangerous principle in the government of the Army than that each soldier should determine for himself whether an order requiring a military duty to be performed is necessary or in accordance with orders, regulations, decision circulars, or custom, and may disobey the order if, in his judgment (taking, of course, all risks in case his judgment should be erroneous), it should not be necessary or should be at variance with orders, regulations, decision circulars, or custom. It is his duty to obey such order first, and if he should be aggrieved thereby, he can seek redress afterwards." Ibid., par. 23.

The civil responsibility is another matter. Civil courts have sometimes made allowance for the requirements of military discipline, but if they should not, the military obligation would remain unimpaired. The soldier, in entering the service, has voluntarily submitted himself to this double and possibly conflicting liability. The evil of an undisciplined soldiery would be far greater than the injustice (apparent, rather than actual) of this principle. Ibid., note 1.

An order given by a military officer to his private should be obeyed by the private, and will be his full protection in a criminal prosecution, unless the illegality of the order is so clearly shown on its face that a man of ordinary sense and understanding would know when he heard it read or given that the order was illegal. *In re* Fair et al., 100 Fed. Rep., 149; Riggs *v.* State, 3 Cold., 85; McCall *v.* McDowell, Fed. Cases, No. 8673; U. S. *v.* Clark, 31 Fed. Rep., 710; *In re* Grimley, 137 U. S., 147; *In re* Lewis, 83 Fed. Rep., 159; *In re* Waite, 81 Fed. Rep., 359.

Whatever may be the rule in time of war and in the presence of actual hostilities, military officers can no more protect themselves than civilians for actual wrongs, committed in time of peace, under orders emanating from a source which is itself without authority in the premises. Hence, a military officer seizing liquors supposed to be in Indian country, when they are not, is liable to an action as a trespasser. Bates *v.* Clark, 95 U. S., 204.

An officer or soldier on leave of absence can not in general be made liable to a

---

[a] See G. C. M. O. 26, War Department, 1872; G. C. M. O. 7, Department of Texas, 1875; G. O. 24, 35, Fifth Military District, 1868.

[b] See the provision, introductory to the Articles of War, of section 1342, Revised Statutes, in which it is specified that "the word *officer*, as used therein, shall be understood to designate commissioned officers."

Mutiny. 22 Art. War.

ART. 22. Any officer or soldier who begins, excites, causes, or joins in any mutiny or sedition, in any troop, battery, company, party, post, detachment, or guard, shall suffer death, or such other punishment as a court-martial may direct.[1]

---

charge of disobedience of orders, except, indeed, where required by a positive order, issued on account of a public emergency, to return before his leave has expired, and failing to comply with such requirement. Dig. Opin. J. A. G., 29, par. 10.

An illiterate soldier, unable to sign his name, was furnished with a written exhibit of it, and ordered by his commanding officer to continue to copy the same till he could properly sign his name to papers. He refused. *Held* that such order, while not in fact a legal one, was not one palpably illegal, and that the soldier should have obeyed it and complained afterwards. Disobedience of an order, however, where its illegality is merely doubtful, should be charged under the sixty-second rather than under this article. Ibid., par. 26.

Where an officer respectfully declined to comply with the direction of his superior to sign the certificate to a report of target firing, on the ground that the facts set forth in such certificate were not within his knowledge, he having been stationed at the butt, where he was not in a position to be informed as to such facts, *held* that he was not amenable to a charge of disobedience of orders under this article. Ibid., par. 29.

The term officer ("superior officer"), in this as in other articles of war, means commissioned officer. (Sec. 1342, Revised Statutes.) So *held* that the disobedience by a cadet private of the Military Academy of an order of a cadet lieutenant of his company was not chargeable under this article, but was an offense under article 62. Ibid., par. 30.

[1] Mutiny at military law may be defined to be an unlawful opposing or resisting of lawful military authority, with intent to subvert the same, or to nullify or neutralize it for the time.(*a*) It is this intent which distinguishes mutiny from other offenses, and especially from those with which, to the embarrassment of the student, it has frequently been confused, viz, those punishable by the twenty-first article, as also those which, under the name of "mutinous conduct," are merely forms of violation of article 62. The offenses made punishable by this article are not necessarily "aggregate" or joint offenses;(*b*) among them is the beginning or causing of a mutiny, which may be committed by a single person. In general, however, the offense here charged will be a concerted proceeding, the concert itself going far to establish the intent necessary to the legal crime. Ibid., par. 31.

To charge as a capital offense under this article a mere act of insubordination or disorderly conduct on the part of an individual soldier or officer, unaccompanied by the intent above indicated, is irregular and improper.(*c*) Such an act should in general be charged under article 20, 21, or 62. Ibid., par. 31.

Soldiers can not properly be charged with the offense of joining in a mutiny under this article where their act consists in refusing, in combination, to comply with an unlawful order. Thus, where a detachment of volunteer soldiers who, under and by virtue of acts of Congress specially authorizing the enlistment of volunteers for the purpose of the suppression of the rebellion, and with the full understanding on their part and that of the officers by whom they were mustered into the service that they were to be employed solely for this purpose, entered into enlistments expressed in terms to be for the war, and after doing faithful service during the war, and just before the legal end of the war, but when it was practically terminated, and when the volunteer organizations were being mustered out as no longer required for the prosecution of the war, were ordered to march to the Plains, and to a region far distant from the theater of the late war, and engage in fighting Indians, wholly unconnected as allies or otherwise with the recent enemy, and thereupon refused together to comply with such orders, *held* that they were not chargeable with mutiny. While by the strict letter of their contracts they were subject to be employed upon any military service up to the last day of their terms of enlistment, the public acts and history of

---

a Compare the definition and description of mutiny or revolt at maritime law in U. S. *v.* Smith, 1 Mason, 147; U. S. *v.* Haines, 5 ibid., 276; U. S. *v.* Kelly, 4 Wash., 528; U. S. *v.* Thompson, 1 Sumner, 171: U. S. *v.* Borden, 1 Sprague, 376.

b Samuel, 254, 257; G. O. 77, War Department, 1837; G. O. 10, Department of the Missouri, 1863.

c See G. O. 7, War Department, 1848; G. O. 115, Department of Washington, 1865, G. C. M. O. 73, Department of the Missouri, 1873. And compare U. S. *v.* Smith, 1 Mason, 147; U. S. *v.* Kelly, 4 Wash., 528; U. S. *v.* Thompson, 1 Sumner, 171.

ART. 23. Any officer or soldier who, being present at any mutiny or sedition, does not use his utmost endeavor to suppress the same, or having knowledge of any intended mutiny or sedition, does not, without delay, give information thereof to his commanding officer, shall suffer death, or such other punishment as a court-martial may direct.

Failing to resist mutiny.
23 Art. War.

ART. 24. All officers, of what condition soever, have power to part and quell all quarrels, frays, and disorders, whether among persons belonging to his own or to another corps, regiment, troop, battery, or company, and to order officers into arrest, and noncommissioned officers and soldiers into confinement, who take part in the same, until their proper superior officer is acquainted therewith. And whosoever, being so ordered, refuses to obey such officer or noncommissioned officer, or draws a weapon upon him, shall be punished as a court-martial may direct.[1]

Quarrels and frays.
24 Art. War.

---

the time made it perfectly clear that this enlistment was entered into for the particular purpose and in contemplation of the particular service above indicated, and to treat the parties as bound to another and distinct service, and liable to capital punishment if they refused to perform it, was technical, unjust, and in substance illegal. Ibid., par. 32.

In a case where a brief mutiny among certain soldiers of a colored regiment was clearly provoked by inexcusable violence on the part of their officer, the outbreak not having been premeditated, and the men having been prior thereto subordinate and well conducted, *advised* that a sentence of death imposed by a court-martial upon one of the alleged mutineers should be mitigated and the officer himself brought to trial. Similarly *advised* in the cases of sentences of long terms of imprisonment imposed on sundry colored soldiers who, without previous purpose of revolt, had been provoked into momentary mutinous conduct by the recklessness of their officer in firing upon them and wounding several, in order to suppress certain insubordination which might apparently have been quelled by ordinary methods.(*a*) Ibid., par. 33.

[1] It is a principle of the common law that any bystander may and should arrest an affrayer. 1 Hawkins, P. C., c. 63, s. 11; Timothy *v.* Simpson, 1 C. M. & R., 762, 765; Phillips *v.* Trull, 11 Johns, 487. And that an officer or soldier, by entering the military service, does not cease to be a citizen, and as a citizen is authorized and bound to put a stop to a breach of the peace committed in his presence, has been specifically held by the authorities. Burdett *v.* Abbott, 4 Taunt., 449; Bowyer, Com. on Const. L. of Eng., 499; Simmons, secs. 1096–1100. This article is thus an application of an established common-law doctrine to the relations of the military service. See its application illustrated in the following general orders: G. O. 4, War Department, 1843; G. O. 63, Department of the Tennessee, 1863; G. O. 104, Department of the Missouri, 1863; G. O. 52, Department of the South, 1871; G. O. 92, ibid., 1872. Dig. Opin. J. A. G., note 2, page 16.

Force used.—The force to be used in quelling an affray or maintaining the peace is that only which is necessary to secure or subdue the offenders. It does not consist of repeated blows, inflicted by way of punishment for past deeds, but must be such force as is preventive in character, and must not exceed the strict necessity of the case requiring such acts of prevention. No officer has authority to inflict punishment for past offenses of any kind. This authority is possessed by courts only. G. O., No. 4, A. G. O., 1843; see also, G. O., par. 7, of G. O. 53, A. G. O., of 1842.

In suppressing disorders, etc., means should be proportioned to ends to be gained; violent measures, clearly unnecessary, will not be justified. U. S. *v.* Carr, 1 Woods, 480.

For a case in which it became incumbent upon a junior officer to "part and quell" an affray, and, in the performance of his duty under this article, to give orders to a military superior, who was a participant in the disturbance, see General Court-Martial Orders, No. 20, War Department, of 1880.

---

[a] Compare cases in G. O. 12, War Department, 1855; G. O. 104, ibid., 1863; G. C. M. O. 50, Headquarters of Army, 1867.

Reproachful or provoking speeches.
25 Art. War.

ART. 25. No officer or soldier shall use any reproachful or provoking speeches or gestures to another. Any officer who so offends shall be put in arrest. Any soldier who so offends shall be confined, and required to ask pardon of the party offended, in the presence of his commanding officer.[1]

Challenges to fight duels.
Feb. 27, 1877, v 19, p. 244.
26 Art. War.

ART. 26. No officer or soldier shall send a challenge to another officer or soldier to fight a duel, or accept a challenge so sent. Any officer who so offends shall be dismissed from the service. Any soldier who so offends shall suffer such punishment as a court-martial may direct.[2]

Allowing persons to go out and fight; seconds and promoters.
27 Art. War.

ART. 27. Any officer or noncommissioned officer, commanding a guard, who, knowingly and willingly, suffers any person to go forth to fight a duel, shall be punished as a challenger; and all seconds or promoters of duels, and carriers of challenges to fight duels, shall be deemed principals, and punished accordingly. It shall be the duty of any officer commanding an army, regiment, troop, battery, company, post, or detachment, who knows or has reason to believe that a challenge has been given or accepted by any officer or enlisted man under his command, immediately to arrest the offender and bring him to trial.[3]

---

[1] This article confers no jurisdiction or power to punish on courts-martial, but merely authorizes the taking of certain measures of prevention and restraint by commanding officers—i. e., measures preventive of serious disorders such as are indicated in the two following articles relating to duels. (*a*) Dig. Opin. J. A. G., par. 34.

[2] To establish that a challenge was sent, there must appear to have been communicated by one party to the other a deliberate invitation in terms or in substance to engage in a personal combat with deadly weapons, with a view of obtaining satisfaction for wounded honor. (*b*) The expression merely of a willingness to fight, or the use simply of language of hostility or defiance, will not amount to a challenge. On the other hand, though the language employed be couched in ambiguous terms, with a view to the evasion of the legal consequences, yet if the intention to invite to a duel is reasonably to be implied—and ordinarily, notwithstanding the stilted and obscure verbiage employed, this intent is quite transparent—a challenge will be deemed to have been given. And the intention of the message, where doubtful upon its face, may be illustrated in evidence by proof of the circumstances under which it was sent, and especially of the previous relations of the parties, the contents of other communications between them on the same subject, etc. (*c*) And technical words in an alleged challenge may be explained by a reference to the so-called duelling code. (*d*) (Ibid., par. 35.)

It may be noted that our Articles of War, unlike the British, fail to make punishable, as a specific military offense, the engaging in a duel. Such an act, therefore, would, as such, be in general chargeable only under article 62. Ibid., note 4.

[3] On the general subject of challenges, and the question what constitutes a challenge, see the principal cases of the sending of challenges in our service, as published in G. O. 64, A. G. O., 1827; G. O. 39, 41, ibid., 1835; G. O. 2, War Department, 1858; G. O., 330, ibid., 1863; G. O. 11, Army of the Potomac, 1861; G. O. 46, Department of the Gulf, 1863; G. O. 223, Department of the Missouri, 1864; G. O. 130, ibid., 1872; G. O. 33, Department and Army of the Tennessee, 1864. And compare Commonwealth *v.* Levy, 2 Wheeler, Cr. C., 245; Commonwealth *v.* Tibbs, 1 Dana, 524; Commonwealth *v.* Hart, 6 J. J. March, 119; State *v.* Taylor, 1 So. Ca., 108; State *v.* Strickland, 2 Nott & McCord, 181; Ivey *v.* State, 12 Ala., 277; Aulger *v.* People, 34 Ill., 486; 2 Bishop, Cr. L., sec. 314; Samuel, 384–387; State *v.* Gibbons, 1 South, 51.

---

[a] Compare Samuel, 372.

[b] Compare the definition in 2 Wharton, Cr. L. secs. 2624–2679.

[c] See note 1 to article 27, par. 2.

[d] State *v.* Gibbons, 1 South, 51.

Upraiding another for refusing challenge. 28 Art. War.

ART. 28. Any officer or soldier who upraids another officer or soldier for refusing a challenge shall himself be punished as a challenger; and all officers and soldiers are hereby discharged from any disgrace or opinion of disadvantage which might arise from their having refused to accept challenges, as they will only have acted in obedience to the law, and have done their duty as good soldiers, who subject themselves to discipline.

Wrongs to officers; redress of. 29 Art. War.

ART. 29. Any officer who thinks himself wronged by the commanding officer of his regiment, and, upon due application to such commander, is refused redress, may complain to the general commanding in the State or Territory where such regiment is stationed. The general shall examine into said complaint and take proper measures for redressing the wrong complained of; and he shall, as soon as possible, transmit to the Department of War a true statement of such complaint, with the proceedings had thereon.[1]

Wrongs to soldiers; redress of. 30 Art. War.

ART. 30. Any soldier who thinks himself wronged by any officer may complain to the commanding officer of his regiment, who shall summon a regimental court-martial for the doing of justice to the complainant. Either party may appeal from such regimental court-martial to a general court-martial; but if, upon such second hearing, the appeal appears to be groundless and vexatious, the party appealing shall be punished at the discretion of said general court-martial.[2]

---

[1] This article is expressly confined to cases of alleged wrongs on the part of regimental commanders. It can not be extended to apply to a complaint of wrong done by a post commander who is not also the commanding officer of the regiment of the complainant. (Dig. Opin. J. A. G., par. 36.)

The right in charges and appeals is not to be exercised in any mode or style the subordinate pleases, but with some reasonable circumspection, and in good faith, and in subjection to the controlling law of discipline. which, to sustain military authority, requires obedience and forbids disobedience to commanding officers. These rights, and the mode of exercising them, have been well and carefully defined in the General Order from the War Department of No. 16 of 1851. Under color of charges or appeals, a subordinate has no right to avail himself of the opportunity to behave with contempt to his commanding officer. Where such a case is alleged in the specifications, a court-martial will entertain and try the charge. (G. O. No. 1, A. G. O., 1856.)

[2] See the title "Regimental Courts-Martial" in the chapter entitled MILITARY TRIBUNALS.

This article is not inconsistent with article 83, which prohibits regimentel courts from trying commissioned officers. It does not contemplate or provide for a *trial* of an officer as an *accused*, but simply an investigation and adjustment of some matter in dispute—as, for example, a question of accountability for public property, of right to pay or to an allowance, of relief from a stoppage, etc. The regimental court does not really act as a court, but as a board, and the "appeal" authorized is practically from one board to another. But though the regimental court has no power to find "guilty" or "not guilty," or to sentence, it should come to some definite opinion or conclusion—one sufficiently specific to allow of its being intelligently reviewed by the general court, if desired. (Dig. Opin. J. A. G., par. 37; see also ibid., paragraphs 38–42.)

The "regimental court-martial" under the thirtieth article of war can not be used

Lying out of quarters. 31 Art. War.

ART. 31. Any officer or soldier who lies out of his quarters, garrison, or camp, without leave from his superior officer, shall be punished as a court-martial may direct.

Soldier absent without leave. 32 Art. War.

ART. 32. Any soldier who absents himself from his troop, battery, company, or detachment, without leave from his commanding officer, shall be punished as a court-martial may direct.[1]

Absence from parade without leave. 33 Art. War.

ART. 33. Any officer or soldier who fails, except when prevented by sickness or other necessity, to repair, at the fixed time, to the place of parade, exercise, or other rendezvous, appointed by his commanding officer, or goes

---

as a substitute for a general court-martial or court of inquiry, for it can not try an officer nor make an investigation for the purpose of determining whether he shall be brought to trial. When, if the soldier's complaint should be sustained, the only redress would be a reprimand to the officer, the matter would not be within the jurisdiction of this court. It can only investigate such matters as are susceptible of redress by the doing of justice to the complainant—that is, when in some way he can be set right by putting a stop to the wrongful condition which the officer has caused to exist. Erroneous stoppages of pay, irregularity of detail, the apparent requirement of more labor than from other soldiers and the like might in this way be investigated and the wrongful condition put an end to. The court will in such cases record the evidence and its conclusions of fact and recommend the action to be taken. The members of the court (and the judge-advocate) will be sworn faithfully to perform their duties as members (and judge-advocate) of the court, and the proceedings will be recorded as nearly as practicable in the same manner as the proceedings of ordinary courts-martial. Manual for Courts-Martial (1901), p. 99, note. (Dig. Opin. J. A. G., par. 42, note 1.)

In the case of Brevet-Major Henshaw, tried by court-martial in 1856 for disrespect to his commanding officer, Major Andrews, Seventh Infantry, the conduct of Major Andrews was thus remarked on by the Secretary of War: "An experienced officer who had served with him (Major A.) admits his treatment of his men to be harsh and violent and his conduct very reprehensible in this respect. This was the considerate testimony of a friendly witness, and is such evidence of the fact as calls for a decided expression of the opinion of the President. A commanding officer has no right to be insulting, harsh, or abusive to those in his command. Both officers and enlisted men are equally entitled to be protected from ill-treatment by him. An officer who commits such offenses is wanting in some of the essential qualifications for command, and it is to be regretted that a thorough investigation of this matter was not made by putting Major Andrews on trial. (G. O. No. 1, A. G. O., 1851.)

[1] An unauthorized absence from the quarters only, as from 11 p. m. inspection, *held* not properly chargeable under the 32d Article. This article contemplates an absence from the soldier's "troop, battery, company, or detachment"—an absence from the post or command. Dig. Opin. J. A. G., par. 374.

Where an officer or soldier on his return from an unauthorized absence is, in consequence of his report of the facts and circumstances of such absence, not proceeded against by his proper commander for the military offense involved, but is by the latter placed upon full duty, such action, under the general custom of the service, may be pleaded as a good defence, if the officer or soldier be subsequently brought to trial for the unauthorized absence. Ibid., par. 377.

An enlisted man forfeits his pay and allowances during the period of an absence without leave, as provided in par. 144 A. R. During such absence he renders no service and therefore earns neither pay nor allowances. The forfeiture is thus by operation of law and accrues independently of the result of a trial for the military offence involved in the unauthorized absence. One of the purposes of the muster and pay rolls is to show what service the soldier renders, and if they show that he has rendered none during a particular period by reason of an absence without leave, he is not entitled to pay and allowances during such period. For an absence without leave of less than a day the soldier may of course be tried by court-martial and sentenced to suffer a forfeiture, but such absence should not be noted on the muster and pay rolls. Ibid., par. 378.

from the same, without leave from his commanding officer, before he is dismissed or relieved, shall be punished as a court-martial may direct.

One mile from camp without leave.
34 Art. War.

ART. 34. Any soldier who is found one mile from camp, without leave in writing from his commanding officer, shall be punished as a court-martial may direct.

Failing to retire at retreat.
35 Art. War.

ART. 35. Any soldier who fails to retire to his quarters or tent at the beating of retreat shall be punished according to the nature of his offense.

Hiring duty.
36 Art. War.

ART. 36. No soldier belonging to any regiment, troop, battery, or company shall hire another to do his duty for him, or be excused from duty, except in cases of sickness, disability, or leave of absence. Every such soldier found guilty of hiring his duty, and the person so hired to do another's duty, shall be punished as a court-martial may direct.

Conniving at hiring duty.
37 Art. War.

ART. 37. Every noncommissioned officer who connives at such hiring of duty shall be reduced. Every officer who knows and allows such practices shall be punished as a court-martial may direct.

Drunk on duty.
38 Art. War.
Feb. 18, 1875, c. 80, v. 18, p. 318; Feb. 27, 1877, c. 69, v. 19, p. 244.

ART. 38. Any officer who is found drunk on his guard, party, or other duty, shall be dismissed from the service. Any soldier who so offends shall suffer such punishment as a court-martial may direct. No court-martial shall sentence any soldier to be branded, marked, or tattooed.[1]

---

[1] *Held* that a soldier found drunk when on duty was properly convicted under this article, though his drunkenness actually commenced before he went on the duty, his condition not being perceived till some time after he had entered upon the same. While it is in itself an offense knowingly to allow a soldier to go on duty when under the influence of intoxicating liquor, yet if a soldier is placed on duty while partially under this influence, but without the fact being detected, and his drunkenness continues and is discovered while he remains upon the duty, he is strictly amenable under this article, which prescribes not that the party shall become drunk, but that he shall be "found drunk" on duty.(*a*) Dig. Opin. J. A. G., par. 43.

A charge of drunkenness on duty (drill) *held* not sustained where the party was found drunk, not at or during the drill, but at the hour appointed for the drill, which however, by reason of his drunkenness, he did not enter upon or attend. The charge should properly have been laid under article 62. Ibid., par. 44.

An officer reporting in person drunk, upon his arrival at a post, to the commander of which he had been ordered to report, *held* chargeable under this article. And so *held* of an officer reporting, when drunk, to the post commander for orders as officer of the day, after having been duly detailed as such. Ibid., par. 45.

But where an officer, after being specially ordered to remain with his company, absented himself from it and from his duty, and while thus absent became and was found drunk, *held* that he was not strictly chargeable with drunkenness on duty under this article, but was properly chargeable with drunkenness in violation of the Sixty-second article, disobedience of orders, and unauthorized absence. Ibid., par. 46.

A post commander, while present and exercising command as such, is deemed to

---

a Note the emphatic order of the President in regard to violations of this article, published in G. O. 104, Headquarters of Army, 1877. See cases in G. O. 11, Department of Louisiana, 1869; G. C. M. O., 113, Department of the Missouri, 1873.

LIBRARY SITY

Sentinel sleeping on post.
39 Art. War.

ART. 39. Any sentinel who is found sleeping upon his post, or who leaves it before he is regularly relieved, shall suffer death, or such other punishment as a court-martial may direct.[1]

Quitting guard, etc., without leave.
40 Art. War.

ART. 40. Any officer or soldier who quits his guard, platoon, or division without leave from his superior officer, except in a case of urgent necessity, shall be punished as a court-martial may direct.

False alarms.
41 Art. War.

ART. 41. Any officer who, by any means whatsoever, occasions false alarms in camp, garrison, or quarters shall suffer death, or such other punishment as a court-martial may direct.

---

be at all times on duty in the sense of this article, and thus liable to a charge under the same if found drunk at the post. (a) Ibid., par. 47.

A medical officer of a post, where there are constantly sick persons under his charge who may at any moment require his attendance, may, generally speaking, be deemed to be "on duty," in the sense of the article, during the whole day, and not merely during the hours regularly occupied by sick call, visiting the sick, or attending hospital. If found drunk at any other hour he may, in general, be charged with an offense under this article. Ibid., par. 48.

The drunkenness need not be such as totally to incapacitate the party for the duty. It is sufficient if it be such as to materially impair the full and free use of his mental or physical abilities. (b) It is not a sufficient defense to a charge of drunkenness on duty to show that the accused, though under the influence of liquor, contrived to get through and somehow perform the duty. Ibid., par. 49. See also ibid., par. 50.

It is immaterial whether the drunkenness be voluntarily induced by spirituous liquor or by opium or other intoxicating drug. In either case the offense may be equally complete. (c) Ibid., par. 51.

Drunkenness not on duty, or when off duty, when amounting to a "disorder," should be charged under article 62, unless (in a case of an officer) committed under such circumstances as to constitute an offense under article 61. Ibid., par. 52.

No punishment except dismissal can legally be imposed upon an officer on a conviction of the offense made punishable by this article. A sentence imposing, with dismissal, any further punishment, as imprisonment or forfeiture of pay, is, as to such additional penalty, unauthorized and inoperative, and should so far be disapproved. Ibid., par. 53.

[1] It is no defense to a charge of "sleeping on post" that the accused had been previously overtasked by excessive guard duty; (d) or that an imperfect discipline prevailed in the command and similar offenses had been allowed to pass without notice; (e) or that the accused was irregularly or informally posted as a sentinel. (f) Evidence of such circumstances, however, may in general be received in extenuation of the offense, or, after sentence, may form the basis for a mitigation or partial remission of the punishment. (g) An officer who places or continues a soldier on duty as a sentinel when, from excessive fatigue, infirmity, or other disability, he is incompetent to perform the important duties of such a position will ordinarily render himself liable to charges. (h) Ibid., par. 55.

(a) That the article is not limited in its application to mere duties of detail, but embraces all descriptions and occasions of duty, see the interpretation of the same as declared in G. O. 7, War Department, 1856, and affirmed in G. O. 5, ibid., 1857. The case in the latter order, indeed, was a case of drunkenness while on duty as a post commander. See another case of the same character in G. C. M. O. 21, Department of the Missouri, 1870, and the remarks of Major-General Schofield thereon, and compare G. C. M. O. 9, War Department, 1875.

(b) See G. C. M. O. 33, War Department, 1875; also G. C. M. O. 21, Department of the Missouri, 1870; G. O. 53, 98, Army of the Potomac, 1862; G. O. 48, Department of Virginia and North Carolina, 1864; G. O. 33, Department of the Platte, 1871.

(c) Simmons, sec. 157; and see Hough (Precedents), 208; James's Precedents, 60.

(d) See G. O. 74, Army of the Potomac, 1862.

(e) G. O 74, Army of the Potomac, 1862.

(f) G. O. 10, Middle Military Department, 1865; G. O. 166, Department of the South, 1864.

(g) See G. O. 10, 62, Department of Virginia and North Carolina, 1863; G. O. 2, Northern Department, 1865; G. O. 67, Department of Washington, 1866; G. O. 9, Department of the South, 1870; G. C. M. O. 44, Department of Texas, 1875.

(h) See G. O. 15, Army of the Potomac, 1861; G. O. 62, Department of Virginia and North Carolina, 1863, G. C. M. O. 59, Department of Texas, 1872; G. C. M. O. 80, Department of the Missouri, 1875.

Misbehavior before the enemy, cowardice, etc.
42 Art. War.

ART. 42. Any officer or soldier who misbehaves himself before the enemy, runs away, or shamefully abandons any fort, post, or guard, which he is commanded to defend, or speaks words inducing others to do the like, or casts away his arms or ammunition, or quits his post or colors to plunder or pillage, shall suffer death, or such other punishment as a court-martial may direct.[1]

Compelling a surrender.
43 Art. War.

ART. 43. If any commander of any garrison, fortress, or post is compelled, by the officers and soldiers under his command, to give up to the enemy or to abandon it, the officers or soldiers so offending shall suffer death, or such other punishment as a court-martial may direct.

Disclosing watchword.
44 Art. War.

ART. 44. Any person belonging to the armies of the United States who makes known the watchword to any person not entitled to receive it, according to the rules and discipline of war, or presumes to give a parole or watchword different from that which he received, shall suffer death, or such other punishment as a court-martial may direct.

Relieving the enemy.
45 Art. War.

ART. 45. Whosoever relieves the enemy with money, victuals, or ammunition, or knowingly harbors or protects an enemy, shall suffer death, or such other punishment as a court-martial may direct.[2]

---

[1] Misbehavior before the enemy may be exhibited in the form of cowardice, or it may consist in a willful violation of orders, gross negligence, or inefficiency, an act of treason or treachery, etc.(*a*) It need not be committed in the actual sight of the enemy, but the enemy must be in the neighborhood, and the act of offense have relation to some movement or service directed against the enemy or growing out of a movement or operation on his part. It may be committed in an Indian war equally as in a foreign or civil war.(*b*) Dig. Opin. J. A. G., par. 56.

The term "his arms or ammunition" does not refer to arms, etc., which are the personal property of the soldier, but means such as have been furnished to him by the proper officer for use in the service.(*c*) The term is to be construed in connection with the further similar expression "his post or colors." Ibid., par. 57.

[2] In view of the general term of description in this and the succeeding article, "whosoever," it was *held*, during the late war, by the Judge-Advocate-General and by the Secretary of War, (*d*) and has been held later by the Attorney-General, (*e*) that civilians, equally with military persons, were amenable to trial and punishment by court-martial under either article. (*f*) Dig. Opin. J. A. G., par. 58. But the sounder construction would seem to be that as the Articles of War are a code enacted for the government of the military establishment, they relate only to persons belonging to that establishment unless a different intent should be expressed or

---

[a] The phases which this offense may assume are well illustrated in cases published in the following general orders: G. O. 5, War Department, 1857; G. O. 183, ibid., 1862; G. O. 18, 134, 146, 189, 204, 229, 282, 317, ibid., 1863; G. O. 27, 64, ibid., 1864; G. C. M. O. 90, 114, 272, 279, ibid., 1864; G. O. 53, 1, 107, 124, 126, 134, 191, 421, ibid., 1865.

[b] See case in G. O. 5, War Department, 1857, in which a soldier was sentenced to be hung upon conviction of mishehavior before the enemy on the occasion of a fight with Indians.

[c] See Samuel, 592; Hough, Practice, 336.

[d] See G. O. 67, War Department, 1861; also the following orders of that Department publishing and approving sentences of civilians tried and convicted under these articles: G. O. 76, 175, 250, 371, of 1863; G. O. 51, of 1864; G. C. M. O. 106, 157, of 1864; G. C. M. O. 260, 671, of 1865.

[e] XIII Opin. Att. Gen., 472.

[f] Admitting this construction to be warranted so far as relates to acts committed on the theater of war or within a district under martial law, it is to be noted that it is the effect of the leading adjudged cases to preclude the exercise of the military jurisdiction over this class of offenses when committed by civilians in places not under military government or martial law. See, especially, **Ex parte Milligan, 4 Wallace, 121-123; Jones *v.* Seward., Barb., 563.**

Corresponding with the enemy.
46 Art. War.

ART. 46. Whosoever holds correspondence with, or gives intelligence to, the enemy, either directly or indirectly, shall suffer death, or such other punishment as a court-martial may direct.[1]

Desertion.
47 Art. War.
May 29, 1830, c. 183, v. 4, p. 418.

ART. 47. Any officer or soldier who, having received pay, or having been duly enlisted in the service of the United States, deserts the same, shall, in time of war, suffer death, or such other punishment as a court-martial may direct; and in time of peace, any punishment, excepting death, which a court-martial may direct.[2]

---

otherwise made manifest. No such intent is so expressed or made manifest. Persons not belonging to the military establishment may be proceeded against for the acts mentioned in the article, but it is by virtue of the power of another jurisdiction, namely, martial law; and martial law does not owe its existence to legislation, but to necessity. The scope of these articles under the legislation of 1776, apparently extending their application to civilians, seems to have become modified on the adoption of the Constitution. Ibid., par. 58, note 5.

During the late war all inhabitants of insurrectionary States were prima facie enemies in the sense of this and the succeeding article. (*a*) A citizen of an insurgent State who entered the United States military service became of course no longer an enemy. So *held* of a lieutenant of the First East Tennessee Cavalry. Ibid., par. 59. For a case in which a citizen of Maryland was convicted of relieving the enemy in violation of this article, see G. O. 76, A. G. O., of 1863.

It is no less a relieving an enemy under this article that the money, etc., furnished is exchanged for some commodity, as cotton, valuable to the other party. Dig. Opin. J. A. G., par. 60.

The act of "releiving the enemy" contemplated by this article is distinguished from that of trading with the enemy in violation of the laws of war, the former being restricted to certain particular forms of relief, while the latter includes every kind of commercial intercourse not expressly authorized by the Government. Ibid., par. 61.

[1] *Held* that the offense of holding correspondence with the enemy was completed by writing and putting in progress a letter to an inhabitant of an insurrectionary State during the late war, it not being deemed essential to this offense that the letter should reach its destination. (*b*) Ibid., par. 62.

It is essential, however, to the offense of giving intelligence to the enemy that material information should actually be communicated to him; the communication may be verbal, in writing, or by signals. Ibid., par. 63.

[2] Desertion is an unauthorized absenting of himself from the military service, by an officer or soldier, with the intention of not returning. In other words, it is the violation of military discipline familiarly known as absence without leave (whether consisting in an original absenting without authority, or in an overstaying of a defined leave of absence) accompanied by an *animus manendi*, or *non revertendi;* this *animus* constituting the gist of the offense. In order to establish the commission of the specific offense, both these elements—the *fact* of the unauthorized voluntary withdrawal, and the *intent* permanently to abandon the service—must be proved. The intent may be inferred, not indeed from the fact of absenting alone, but from the circumstances attending this fact, and here the duration of the absence is especially material. Thus the circumstance that the absence has been exceptionally protracted and quite unexplained will, in general, furnish a presumption of the existence of the necessary intent. An unauthorized absence, however, of a few hours, terminated by a forcible apprehension, may, under certain situations, be sufficient evidence of such intent and thus proof of a desertion; while an absence for a considerable interval,

---

[a] See the opinion of the United States Supreme Court (frequently since reiterated in substance) as given by Grier, J., in the "Prize Cases," 2 Black, 666 (1862); and by Chase, C. J., in the cases of Mrs. Alexander's Cotton and The Venice, 2 Wallace, 274, 418 (1864). In the latter case the Chief Justice observes: "The rule which declares that war makes all the citizens or subjects of one belligerent enemies of the Government and of all the citizens or subjects of the other, applies equally to civil and to international wars." That an insurrectionary State was no less "enemy's country," though in the military occupation of the United States, with a military governor appointed by the President, see opinion by Field, J., in Coleman *v.* Tennessee, 7 Otto, 516, 517.

[b] Compare Hensey's Case, 1 Burrow, 642; Stone's Case, 6 Term, 527; Samuel, 580.

unattended by circumstances indicating a purpose to separate permanently from the service, or to dissolve the pending engagement of the soldier, may be proof simply of the minor included offense. In order to determine whether or not the officer or soldier absented himself with the intent not to return, *i. e.*, whether his offense was desertion or absence without leave, all the circumstances connected with his leaving, absence, and return (whether compulsory or voluntary) must be considered together. Each case must be governed by its own peculiar facts, and no general rule on the subject can be laid down. Ibid., par. 1053.

That a soldier has been charged with a desertion is no evidence that he has committed the offense. Thus, *held* that the mere fact that a soldier, absent without authority, had been arrested and returned to his regiment as a deserter, was no proof whatever of the offense charged. So, *held* that a mere entry on a morning report book, descriptive roll, or other official statement or return that a soldier deserted on a certain day was not legal evidence of a desertion by him, but was evidence only that he had been charged with desertion. (*a*) So, a report from the Adjutant-General's Office containing extracts from the muster rolls of a regiment on which a soldier of the same was noted as having deserted on a certain date, *held* incompetent evidence of the fact of desertion upon the trial of the soldier for that offense. (*b*) Similarly *held* that the mere statement of a first sergeant, given as testimony on the trial of a soldier of his company charged with desertion, that the accused "deserted" at a certain time and place, was insufficient as proof of the offense charged, being, indeed, but an assertion of a conclusion of law. In such cases it is for the witness simply to state the facts and circumstances, so far as known to him, attending the act charged, it being the province of the court alone to arrive at the conclusion that the offense has been committed. To convict a deserter upon an accusation merely, however formally and officially the same may be made, would be as unwarranted in law as it would be unjust in fact. Ibid., par. 1056.

The nature of the offense of desertion is well illustrated in cases of escape. The mere fact that a soldier while awaiting trial or sentence, or while under sentence (and not discharged from the service), escapes from his confinement is not proof of a desertion on his part, since he may have had in view some minor object, such as the procuring of liquor, etc. (*c*) But an escape, followed by a considerable absence, especially if the soldier is obliged to be forcibly apprehended, is strong presumptive evidence of the existence of the intent necessary to constitute the crime. So, though the absence involved may be comparatively brief, the circumstances accompanying the escape or attending the apprehension may be such as to justify an equally strong presumption. An escape, with intent not only to evade confinement, but to quit the service, while the party is held awaiting proceedings for desertion, is of course a second or additional desertion.

As to the nature of the offense which may be involved, there is properly no substantial distinction between an escape while awaiting trial or sentence and an escape while in confinement under sentence. An escape, indeed, from an imprisonment imposed by sentence would probably be more likely to be characterized by an animus non revertendi than an escape from a merely preliminary confinement in arrest. So an escape from confinement while awaiting trial upon a grave charge, which must entail, upon conviction, a severe punishment, would naturally be more generally so characterized than an escape from an arrest upon a charge of inferior consequence.

Undoubtedly, in the great majority of cases, escape is desertion; the precedents, however, show that it is not necessarily so, and upon the mere fact alone that a soldier has liberated himself from military custody it is not just to convict him of having designed to dissolve his contract and permanently abandon the military service. Of course, an escape from legal military custody is always an offense, and the soldier who has escaped may (where his act does not amount to a desertion) be brought to trial for such offense as "conduct to the prejudice of good order and military discipline."

It need hardly be added that an escape from imprisonment under sentence, effected by a party who has been dishonorably discharged under the same sentence, can not constitute a desertion or other offense, the party at the time of escape being no longer in the military service. Ibid., par. 1057.

Held to be no defense to a charge of desertion that the accused, at the time of the

---

a Compare G. C. M. O., 33, Department of the Missouri, 1875.

b Compare Hanson *v.* S. Scituate, 115 Mass., 336.

c See a case of this nature (an escaping in order to obtain liquor) in G. O., 32, Department of the South, 1873; and compare the case in G. O., 87, Department of the South, 1872, in which a conviction of desertion is disapproved on the ground that the evidence showed "merely an escape from the guardhouse, without intention to leave the service or the vicinity of the post." And see in this connection Samuel, 324, where to be "discovered," after a short absence, "in the pursuit of some accidental temporary object, though perhaps otherwise illicit," is instanced as not indicating an intent, by the offender, "to sever himself from the service."

enlistment which he is charged with having abandoned, was an unapprehended deserter from the Army, an enlistment of a deserter being not void but voidable only. Ibid., par. 1058.

It is no defense to a charge of desertion that the soldier was induced to abandon the service by reason of ill treatment, want of proper food, etc.; such circumstances can only palliate, not excuse, the offense committed. So, in a case of a Swiss, who, having enlisted in our Army, deserted after two years of service, *held* that it was no defense (though, under the circumstances, matter of extenuation) that his act had been induced by an intense nostalgia or maladie du pays. So, *held*, in a case of a desertion by a German, that the fact that he had received a notification from the military authorities of the North German Empire to report at home for military duty under the penalty of being considered as a deserter from the German army constituted no defense to a desertion committed by him from our service. (*a*) Ibid., par. 1059.

It is, however, a complete answer to a charge of desertion before a court-martial that the accused has previously been "restored to duty without trial," as sanctioned by paragraph 143, Army Regulations of 1901, provided he has been so restored by competent authority, i. e., the commander who would have been authorized to convene a general court for his trial; otherwise, however, when so restored by a superior not duly authorized. Ibid., par. 1060.

REWARDS.

The reward of $30 made payable by paragraph 135, Army Regulations, is not due merely on the apprehension of a deserter; he must also be delivered "to the proper military authority at a military station, or at some convenient point as near thereto as can be agreed upon." (*b*) The fact of the offer of a reward for the arrest of a deserter does not authorize a breach of the peace or commission of an illegal act in making the arrest. (*c*) Ibid., par. 1071.

The amount of the reward—to cite from G. O., 325, of 1863—is in full "for all expenses incurred in apprehending, securing, and delivering a deserter." Disbursements made by a civilian, where no arrest is effected, are at his own risk, and can not legally be reimbursed by the military authorities. Ibid., par. 1072.

The legal liability imposed upon the soldier by paragraph 137, Army Regulations, to have the amount of the award stopped against his pay, is quite independent of the punishment which may be imposed upon him by sentence of court-martial on conviction of the desertion. Such stoppage is incident upon the conviction (*d*) and need not be directed in the sentence; courts-martial, indeed, have sometimes assumed to impose it, like an ordinary forfeiture of pay, but its insertion in the sentence adds nothing to its legal effect. Ibid., par. 1073.

Where a soldier, charged with desertion, is acquitted, or where, if convicted, his conviction is disapproved by the competent reviewing authority, he can not legally be made liable for the amount of a reward paid or payable for his arrest as a deserter, since in such cases he is not a deserter in law. Ibid., par. 1074.

Where a soldier for whose apprehension as a supposed deserter the legal reward has been paid is subsequently brought to trial upon a charge of desertion and is found guilty not of desertion, but only of the lesser and distinct offense of absence without leave, he clearly can not legally be held liable for the reward by a stoppage of the amount against his pay. In such a case the instrumentality resorted to by the United States for determining the nature of his offense—the court-martial—having pronounced that it was not desertion, the Government is bound by the result, and to visit upon him a penalty to which a deserter only can be subject would be grossly arbitrary and wholly unauthorized. Moreover, such action would be directly

---

[a] As to the principle of the right of expatriation, as asserted in our public law, see section 1999, Revised Statutes.

[b] The actual payment of the compensation in such cases is authorized by the annual Army appropriation acts, which, in appropriating for the incidental expenses of the Quartermaster's Department, include as an item "for the apprehension, securing, and delivering of deserters, and the expenses incident to their pursuit."

[c] See, in this connection, Clay *v.* United States, Devereux, 25, in which an officer who, under the orders of a superior, had, without previously procuring proper authority to enter and search from a civil magistrate, broke into a dwelling house for the purpose of securing the arrest of certain deserters, was held to have committed an unjustifiable trespass, and his claim to be reimbursed by the United States for the amount of a judgment recovered against him on account of his illegal act was disallowed by the Court of Claims. *Held* by the Attorney-General October 12, 1894 (confirming the views of the Judge-Advocate-General), "that the right to forcibly enter into private houses, as asserted by Adjutant-General's circular No. 6, of 1885, does not exist." And see par. 2 of Circ. No. 12, H. Q. A., 1894, revoking Circ. No. 6, of 1885.

[d] See, to a similar effect, the recent opinion of the Attorney-General referred to in the next note.

at variance with the terms of paragraph 124 of the Army Regulations, which fixes such liability upon the soldier tried in the event only of his conviction of desertion,(a) unless, indeed, the sentence of the court expressly forfeits the amount.(b) Ibid., par. 1075.

Where a civil official, having made an arrest of a deserter, concealed him from the military authorities and afterwards permitted or connived at his escape, recommended that the Attorney-General be requested to instruct the proper United States district attorney to initiate proceedings under section 5455, Revised Statutes. Ibid., 1092.

To entitle a person (under paragraph 135, Army Regulations of 1901) to the reward for the arrest of a deserter (c) the party arrested must be still a soldier. Though at the time of the arrest the period of his term of enlistment may have expired, or he may be under sentence of dishonorable discharge, yet if he has not been discharged in fact, the official duly making the arrest, etc., on account of a desertion committed before the end of his term becomes entitled to the payment of the reward specified in the regulations. Similarly *held*, where the soldier, arrested when at large as a deserter, had been sentenced to confinement (without discharge) and had escaped therefrom. Ibid., par. 1076.

The soldier arrested must be a deserter and legally liable as such. If he has been judicially determined to be not a deserter, as where he has been convicted of absence without leave only, or if, in view of the limitation of the one hundred and third article, he has a legal defense to a prosecution for desertion, the reward is not payable for his apprehension. Ibid., par. 1077.

Where the soldier when arrested had been absent but three days, and was still in uniform, and had not been reported or dropped as a deserter, and his company commander had not the "conclusive evidence" of his "intention not to return," referred to in paragraph 132, Army Regulations of 1889 (p. 133 of 1895, 144 of 1901), *held* that there was not sufficient evidence that he was a deserter to justify the payment of the reward for his arrest and delivery. Ibid., par. 1078.

The arrest made must be a legal one. Thus *held* that the reward was not payable for an arrest made on the soil of Mexico, involving a violation of the territorial rights of that sovereignty. An act done in violation of law can not be the basis of a legal claim. Ibid., par. 1080.

Where the deserter was not arrested by, but surrendered himself to, the civil official, who in good faith took him into custody and securely held and duly delivered him, *advised* that there had been a substantial apprehension (for the purpose of reward) and that the reward was properly payable. Ibid., par. 1081.

The delivery should be personal and manual on the part of the civil official. Where a soldier who had deserted was sentenced to a penitentiary as a horse thief, and at the end of his term of imprisonment a United States marshal caused information that he was a deserter to be conveyed to the commander of a neighboring military post, who thereupon had him arrested and brought to the post, *held* that the marshal was not entitled to claim the reward. Ibid., par. 1082.

So, where a civil official merely informed a captain of artillery that two soldiers serving in his battery were deserters from the battalion of engineers, *held* that, though such information was correct, the official was not entitled to the reward; and that the amount of the same, which had been erroneously paid him on the certificate of the captain, should be charged against the latter under paragraph 736, Army Regulations of 1901. Ibid., par. 1083.

The reward should be withheld where there is evidence of *collusion* between the alleged deserter and the civil official. *Advised* that a suspicion of such collusion was properly entertained in a case where the soldier, after an absence of but a few days, voluntarily surrendered himself, at or near the post of delivery, to a policeman, who turned him over, without expense or difficulty, to the military authorities, who did not treat him as a deserter, but caused him to be charged, tried, and convicted as an absentee without leave only. Ibid., par. 1086.

An officer of the customs, empowered by law to make arrests of persons violating the revenue laws, but having no such general authority as is ordinarily possessed by peace officers "to arrest offenders" (according to the terms of the act of October 1, 1890, authorizing certain civil officials to arrest deserters), *held* not entitled to be paid the regulation reward for the apprehension, etc., of a deserter from the Army. Ibid., par. 1087.

Held that a justice of the peace of Idaho was not, by the laws of that State, a peace

---

a This conclusion was concurred in by the Attorney-General in XVI Opins., 474.

b See G. O., 38, of 1890.

c The Army Regulations, so far as it fixes the amount of the "reward," has been superseded by the provision of the recent Army appropriation acts of August 6, 1894, and February 12, 1895, to the effect that the sum paid shall not be "greater than ten dollars."

Deserter shall serve full term. Jan. 11, 1812, c. 14, s. 16, v. 2, p. 673; Jan. 29, 1812, c. 16, s. 127, v. 2, p. 796. 48 Art. War.

ART. 48. Every soldier who deserts the service of the United States shall be liable to serve for such period as shall, with the time he may have served previous to his desertion, amount to the full term of his enlistment; and

officer or authorized to arrest offenders, and was therefore not within the terms of the act of October 1, 1890, or legally entitled to be paid the reward for the arrest, etc., of a deserter. Such justice may by his warrant authorize and thus cause arrests, but actual arrests pertains, under the laws of the State, to another class—sheriffs, constables, city mashals, and policemen. Similarly *held* in regard to an Indian who brought in a deserter to a military post in North Dakota, he having no authority under the laws of that State to make arrests. But *held* that a member of the Indian police, established under the regulations of the Indian Office, was a civil officer having authority to arrest offenders, and was entitled to the reward for the arrest of a deserter. [See Circular No. 12 (H. A.), 1894.] Ibid., par. 1088.

Circular No. 11 (H. A.), 1883, declares that the reward shall not be paid where the deserter, at the time of arrest, "is serving in some other branch of the Army," etc. Thus *held* that the reward was not payable for the arrest of a deserter from the cavalry who, subsequently to his desertion, had enlisted in an infantry regiment, in which he was serving at the date of the arrest. Ibid., par. 1091.

A deserter is not chargeable, under paragraph 137, Army Regulations of 1901, with the expenses of transportation therein specified, if his conviction has been duly *disapproved*, such disapproval being tantamount to an acquittal. Ibid., par. 1065.

The expense of the transportation of a convicted deserter, incurred in the course of the execution of his sentence, is not chargeable against the deserter under paragraph 137, Army Regulations of 1901, but must be borne by the United States. Ibid., par. 1068.

Every desertion includes an absence without leave. Upon a trial for desertion the accused is tried also for the absence without leave involved in the offense charged.[a] If acquitted, *without reservation*, of the desertion, he is acquitted also of the lesser offense. If convicted, as he may be (see FINDING, section 8), of the lesser offense only, under a charge of the greater, he is acquitted in law of the latter. Ibid., par. 1093.

The right of the United States to arrest and bring to trial a deserter is paramount to any right of control over him by a parent on the ground of his minority.[b] Ibid., par. 1094.

Enlisting in the enemy's army by prisoner of war is desertion, unless submitted to as a last resort to save life or escape extreme suffering, or to obtain freedom. Thus, *held* in a case of a United States soldier who entered the service of the enemy from Andersonville, Ga., in the late war, that the burden of proof was on him to establish that he resorted to such enlistment with design of effecting his escape and rejoining his own army; and that his abandoning such enlistment and coming within our lines at the first opportunity was material evidence of such a design. Ibid., par. 1095.

A soldier who had been extradited from Mexico solely on a charge of theft, *held* not liable to trial as a deserter; the principle that a person extradited on account of a certain alleged offense is exempt from trial on any other criminal offense[c] being deemed applicable where the other offense is a military one. A deserter from our Army can not, in the absence of any international convention allowing it, legally be arrested as such in Mexico and brought thence into Texas. Ibid., par. 1096.

The amenability to trial of a deserter from an enlistment in the Army is not affected by the fact that when he enlisted he was a deserter from the Marine Corps. Ibid., par. 1097.

Held that a deserter from a volunteer regiment was, after the disbandment of the Volunteer Army, no longer amenable to the military jurisdiction, having become thereupon a civilian. Ibid., par. 1098.

A civil employee of the Quartermaster Department does not become liable as a deserter by abandoning his employment. Ibid., par. 1099.

The fact that a soldier has been dropped from the rolls as a deserter is not legal evidence to prove the fact of desertion on a trial for that offense. Ibid., par. 1056.

---

[a] See XIII Opins. Att. Gen., 460.

[b] In re Cosenow, 37 Fed., 668; In re Kaufman, 41 Fed., 876. And compare In re Morrissey, 137 U. S., 157.

[c] U. S. *v*. Rauscher, 119 U. S., 407.

such soldier shall be tried by a court-martial and punished, although the term of his enlistment may have elapsed previous to his being apprehended and tried.[1]

Aug. 15, 1861, s. 2, v. 12, p. 316.
49 Art. War.

ART. 49. Any officer who, having tendered his resignation, quits his post or proper duties, without leave and with intent to remain permanently absent therefrom, prior to due notice of the acceptance of the same, shall be deemed and punished as a deserter.

Enlisting in other regiment without discharge.
50 Art. War.

ART. 50. No noncommissioned officer or soldier shall enlist himself in any other regiment, troop, or company without a regular discharge from the regiment, troop, or company in which he last served, on a penalty of being reputed a deserter and suffering accordingly.[2] And in case

---

[1] The liability to make good to the United States the time lost by desertion, enjoined by the first clause of this article, is independent of any punishment which may be imposed by a court-martial, on conviction of the offense, it need not, therefore, be adjudged or mentioned in terms in a sentence. (*a*) If the conviction is disapproved, the legal status of the accused is the same as if he had been acquitted, and the obligation of additional service is of course not incurred. Ibid., par. 64.

Where a deserter was sentenced to imprisonment for the "balance of his term," *held* that he was not absolved from the obligation to make good time lost; these works referring to the balance of the term of his original enlistment. Ibid., par. 65.

The time passed by a deserter in confinement under sentence can not be computed as a part of the period required by the article to be made good to the United States, such time not being a time of military service, but of punishment. Nor can the period of confinement be credited where the sentence is remitted before it is fully executed. So time passed by the deserter in arrest or confinement (or in hospital), while waiting trial or action upon his sentence, can not be computed. Ibid., par. 66.

The enforcement of the liability, where enforced at all, is generally postponed till after the execution of the punishment (if any) imposed upon the deserter by his sentence. A deserter may still be required to make good the time included in his unauthorized absence from the service, although his term of enlistment has expired pending a term of confinement adjudged him by court-martial on conviction of his offense, provided he has not been discharged. Ibid., par. 67.

The United States may waive the liability imposed by the first clause of the article. It is, in fact, waived where the deserter, without being required to perform the service, is discharged by one of the officials authorized by article 4 to discharge soldiers. So it is waived where the soldier is adjudged to be dishonorably discharged by sentence of court-martial and this punishment is duly approved and thereupon executed. Ibid., par. 68.

The liability to trial and punishment imposed by the second clause of the article is subject to the limitation of prosecutions prescribed by article 103. Ibid., par. 69.

The contract of enlistment is for military service for a term of years, and when interrupted by the soldier's desertion remains incomplete and subject to specific performance. While some authorities hold that the obligation to make good time lost by desertion attaches only upon conviction, the weight of authority and the practice are to the effect that the punishment for desertion and the obligation to complete the contract of enlistment are separate and distinct, and that the restoration of a deserter to duty without trial does not relieve him from the obligation to complete his contract. This obligation continues, though the statute of limitation has taken effect in his case or has been successfully pleaded in bar on a trial by court-martial. Ibid., par. 70.

[2] This article, in its first clause, does not create a specific offense, or particular kind of desertion, or an offense distinct from the desertion made punishable in the forty-seventh article, but declares in effect that a soldier who abandons his regiment shall be deemed none the less a deserter although he may forthwith reenlist in a new regi-

---

[a] See G. O. 21, Department of the Lakes, 1873; G. O. 94, Department of the Missouri, 1867; G. C. M. O. 74, Department of the East, 1873. The old ruling *contra* (see G. O. 26, 45, Headquarters of Army, 1843) may be regarded as abandoned in our law and practice.

any officer shall knowingly receive and entertain such non-commissioned officer or soldier, or shall not, after his being discovered to be a deserter, immediately confine him and give notice thereof to the corps in which he last served, the said officer shall, by a court-martial, be cashiered.

Advising to desert. **51 Art. War.** May 29, 1830, c. 183, v. 4, p. 418.

ART. 51. Any officer or soldier who advises or persuades any other officer or soldier to desert the service of the United States, shall, in time of war, suffer death, or such other punishment as a court-martial may direct; and in time of peace, any punishment excepting death which a court-martial may direct.[1]

Misconduct at divine service. **52 Art. War.**

ART. 52. It is earnestly recommended to all officers and soldiers diligently to attend divine service. Any officer who behaves indecently or irreverently at any place of divine worship shall be brought before a general court-martial, there to be publicly and severely reprimanded by the president thereof. Any soldier who so offends shall, for his first offense, forfeit one-sixth of a dollar; for each further offense he shall forfeit a like sum, and shall be confined twenty-four hours. The money so forfeited shall be deducted from his next pay, and shall be applied, by the

---

ment. It does not render the act of reenlistment a desertion, but simply makes the reenlistment, under the circumstances indicated, prima facie evidence of a desertion from the previous enlistment from which the soldier has not been discharged, or, more accurately, evidence of an intent not to return to the same.[a] The object of the provision, as it originally appears in the British code, apparently was to preclude the notion, that might otherwise have been entertained, that a soldier would be excused from repudiating or departing from his original contract of enlistment provided he presently renewed his obligation in a different portion of the military force.[b] Ibid., par. 73.

Held, that an enlisted marine, who abandoned the Marine Corps without a discharge and enlisted in the Army, could not be "reputed a deserter" according to the terms of this article; but *advised* that he be turned over to the commandant of that corps for the proper disposition and action. Ibid., par. 74.

Where a soldier enlisted in a certain regiment, after being officially notified that he was duly discharged from a previous enlistment, but without having received the written certificate and evidence of his discharge, which, by mistake or accident, had not been delivered to him as required by article 4, *held*, that he could not properly be "reputed" or charged as a deserter. Ibid., par. 75.

An enlistment in violation of this article is not void but voidable at the option of the United States only. Until so avoided service under it is valid service. On a trial for an offense committed during such enlistment, a plea by the accused, in bar of trial, that this enlistment, being fraudulent on his part, is void, should not be sustained. Ibid., par. 76.

[1] A declaration, made by one soldier to another, of a willingness to desert with him in case he should decide to desert, *held* not properly an advising to desert, in the sense of this article. To constitute the offense of advising to desert, it is not essential that there should have been an actual desertion by the party advised. But *held* otherwise as to the offense of persuading to desert; to complete this offense the persuasion should have induced the act.[c] Dig. Opin. J. A. G., par. 77.

---

[a] See the similar view expressed in G. C. M. O. 129, Department of the Missouri, 1872; G. C. M. O. 77, ibid., 1874.

[b] See Samuel, 330, 331.

[c] Compare Hough (Practice), 172, and cases in G. O. 23, Department of the Missouri, 1862; G. C. M. O. 11, 152, ibid., 1868.

captain or senior officer of his troop, battery, or company, to the use of the sick soldiers of the same.

Profane oaths. 53 Art. War.

ART. 53. Any officer who uses any profane oath or execration shall, for each offense, forfeit and pay one dollar. Any soldier who so offends shall incur the penalties provided in the preceding article; and all moneys forfeited for such offenses shall be applied as therein provided.

Officers to keep good order in their commands. 54 Art. War.

ART. 54. Every officer commanding in quarters, garrison, or on the march shall keep good order, and, to the utmost of his power, redress all abuses or disorders which may be committed by any officer or soldier under his command; and if, upon complaint made to him of officers or soldiers beating or otherwise illtreating any person, disturbing fairs or markets, or committing any kind of riot, to the disquieting of the citizens of the United States, he refuses or omits to see justice done to the offender and reparation made to the party injured, so far as part of the offender's pay shall go toward such reparation, he shall be dismissed from the service, or otherwise punished, as a court-martial may direct.[1]

---

[1] While this article would certainly appear to contemplate the making of reparation for injuries done to the persons of citizens rather than for injuries done to their property, yet *advised*, in view of the precedents, that it might properly be regarded as within the equity of the article to indemnify a citizen for wanton injury done to his property by a soldier or soldiers, by means of a stoppage against his or their pay, summarily ordered upon investigation by the commanding officer. (*a*) In a few cases a stoppage of the pay of an entire regiment, for damage to private property committed by its members, has been sanctioned as authorized under the general remedial provisions of this article. Dig. Opin. J. A. G., par. 78.

The stoppage contemplated is quite distinct from a punishment by fine, and it can not affect the question of the summary reparation authorized by the article, that the offender or offenders may have already been tried for the offense and sentenced to forfeiture of pay. In such a case, indeed, the forfeiture, as to its execution, would properly take precedence of the stoppage. On the other hand, where the stoppage is first duly ordered under the article, it has precedence over a forfeiture subsequently adjudged for the offense. Ibid., par. 79.

It does not affect the question of reparation under the article that the offender or offenders may be criminally liable for the injury committed or may have been punished therefor by the civil authorities. Ibid., 47, par. 80.

Held that the remedial provision of this article could not be enforced in favor of military persons, or in favor of the United States, or to indemnify parties for property stolen or embezzled. Ibid., par. 81.

The pay of the offender or offenders can be resorted to only for the purpose of the "reparation." A military commander can have no authority to add a further amount of stoppage by way of punishment. Ibid., par. 82.

Held that, as an agency for assessing the amount of the damage, a court-martial could not properly be substituted for the board directed by General Orders 35, Headquarters of the Army, 1868, to be convened for such purpose. Ibid., par. 83.

The procedure under this article, and pursuant to General Orders 35 of 1868, is as

---

[a] See G. O. 35, Headquarters of Army, 1868, construing this article, and prescribing the proceeding under it, reparation for injury to property as well as person being authorized. The article, however, is antiquated in form and indefinite and incomplete in its provisions, and calls for repeal or amendment. For some of the principal cases in which it has been applied in our practice, the student is referred to G. O. 4, Department of the Ohio, 1863; G. O. 123, Department of the Gulf, 1864; G. O. 161, Department of Washington, 1865; G. O. 59, ibid., 1866; G. O. 74, Department of Arkansas, 1865; G. O. 48, 55, Department of Louisiana, 1866; G. O. 6, Department of the Cumberland, 1867; G. O. 10, Department of the South, 1870.

Waste or spoil, and destruction of property without orders.
55 Art. of War.

ART. 55. All officers and soldiers are to behave themselves orderly in quarters and on the march; and whoever commits any waste or spoil, either in walks or trees, parks, warrens, fish-ponds, houses, gardens, grain-fields, inclosures, or meadows, or maliciously destroys any property whatsoever belonging to inhabitants of the United States (unless by order of a general officer commanding a separate army in the field), shall, besides such penalties as he may be liable to by law, be punished as a court-martial may direct.

Violence to persons bringing provisions.
56 Art. of War.

ART. 56. Any officer or soldier who does violence to any person bringing provisions or other necessaries to the camp, garrison, or quarters of the forces of the United States in foreign parts, shall suffer death, or such other punishment as a court-martial may direct.

Forcing a safeguard.
57 Art. of War.
Feb. 13, 1862, c. 25, s. 5, v. 12, p. 340; July 13, 1861, c. 3, s. 5, v. 12, p. 257; July 31, 1861, c. 32, v. 12, p. 284.

ART. 57. Whosoever, belonging to the armies of the United States in foreign parts, or at any place within the United States or their Territories during rebellion against the supreme authority of the United States, forces a safeguard, shall suffer death.

Certain crimes during rebellion.
Mar. 3, 1863, c. 75, s. 30, v. 12, p. 736; July 13, 1861, c. 3, s. 5, v. 12, p. 757; July 31, 1861, c. 32, v. 12, p. 284.
58 Art. of War.

ART. 58. In time of war, insurrection, or rebellion, larceny, robbery, burglary, arson, mayhem, manslaughter, murder, assault and battery with an intent to kill, wounding, by shooting or stabbing, with an intent to commit murder, rape, or assault and battery with an intent to commit rape, shall be punishable by the sentence of a general court-martial, when committed by persons in the military service of the United States, and the punishment in any such case shall not be less than the punishment provided, for the like offense, by the laws of the State,

---

follows: The citizen aggrieved tenders a "complaint" under oath charging the injury against a particular soldier or soldiers, described by name (if known), regiment, etc., and accompanied by evidence of the injury, and of the instrumentality of the person or persons accused. If such evidence be satisfactory, the commanding officer has the damages assessed by a board, and makes orders for such stoppage of pay as will be sufficient for the "reparation" enjoined by the article. The commander must have a proper case presented to him; he can not legally proceed *sua sponte.* Ibid., par. 84.

Where proof was duly made under this article of injury done by some persons of a command, but the active perpetrators could not upon investigation be determined, and it appeared that the entire command was present and implicated, *held* that the stoppage might legally be made against all the individuals present. Ibid., par. 85.

It would not be a sound construction of the article to extend the specified measure of redress to other than the specified cases. Its strict construction would indeed limit the specific redress to acts of violence against the person, but the weight of American authority extends it to acts of violence against property also. Further than this the authorities do not go, holding, for example, that it is not applicable to cases of larceny and embezzlement. Therefore *held* that to make a stoppage of pay against enlisted men to reimburse the keeper of a restaurant for food ordered by them and not paid for would be wholly unauthorized by the terms, scope, or intent of the article. Ibid., par. 86.

Territory, or district in which such offense may have been committed.[1]

ART. 59. When any officer or soldier is accused of a capital crime, or of any offense against the person or property of any citizen of any of the United States, which is punishable by the laws of the land, the commanding officer, and the officers of the regiment, troop, battery, company, or detachment, to which the person so accused belongs, are required, except in time of war, upon application duly made by or in behalf of the party injured, to use their utmost endeavors to deliver him over to the civil magistrate, and to aid the officers of justice in apprehending and securing him, in order to bring him to trial. If, upon such application, any officer refuses or willfully neglects, except in time of war, to deliver over such accused person to the civil magistrates, or to aid the officers of justice in apprehending him, he shall be dismissed from the service.[2]

Delivery of offenders in military service to civil magistrate. 59 Art. of War.

---

[1] The jurisdiction conferred by this article upon military courts has been held by the highest judicial authority to be not exclusive, but concurrent merely with that of the civil tribunals. (*a*) The word "shall" in the term "shall be punishable" is construed as equivalent to "may." (*b*) (Dig. Opin. J. A. G., par. 87.)

In framing a charge under this article it will not in general be essential to allege in connection with the date of the offense or to show by evidence that the act was committed at a time of war, etc., this being a fact of which a court will ordinarily properly take judicial notice. (*c*) Ibid., par. 88.

Held (November, 1865) that military courts were still empowered to exercise the jurisdiction conferred by this article, the status belli not having yet been declared to be terminated, either by the Executive or Congress. A court-martial, of course, could have no authority whatever to decide whether the war was ended. (Ibid., par. 89.)

When a sentence adjudged by a court convened by the authority of this article imposed a punishment of less severity than that provided for the same offense by the law of the State in which the offense was committed (as imprisonment where the law of the State required the death penalty), *held* that such a sentence was unauthorized and inoperative. But though the punishment must not be "less," it may legally be of greater severity than that provided by the local statute. *Held* that the court, in imposing punishment, should be governed by the local law (so far as required by the article), although the offense was committed in a State whose ordinary relations to the General Government had been suspended by a state of war or insurrection. (*d*) Ibid., par. 90. See also paragraphs 91–93, ibid.

[2] This article is a recognition of the general principle of the subordination of the military to the civil power, (*e*) and its main purpose evidently is to facilitate, in cases of offenders against the local civil statutes who happen to be connected with the Army, the execution of those statutes, where, as citizens, such persons remain legally amenable to arrest and trial thereunder. Protection of military persons from civil arrest is not the object of this article. (Ibid., par. 94.)

The commanding officer, before surrendering the party, is entitled to require that the "application" shall be so specific as to identify the accused and to show that he is charged with a particular crime or offense which is within the class described in the article. Where it is doubtful whether the application is made in good faith and

---

[a] Coleman *v.* Tennessee, 7 Otto, 513. And see People *v.* Gardiner, 6 Parker, 143; G. O. 29, Department of the Northwest, 1864; G. O. 32, Departmentment of Louisiana, 1866.

[b] People *v.* Gardiner, ante.

[c] See the application of this principle to the fact of the existence of the late war of the rebellion in Justice Field's charge to the grand jury in U. S. *v.* Greathouse, 4 Sawyer, 457.

[d] That the Southern States during the late war were "at no time out of the pale of the Union," see White *v.* Hart, 13 Wallace, 646.

[e] See the declaration of this principle in the case of Dow *v.* Johnson, 10 Otto, 169.

in the interests of law and justice, the commander may demand that the application be especially explicit and be sworn to; and in general the preferable and, indeed, only satisfactory course will be to require the production, if practicable, of a due and formal warrant or writ for the arrest of the party. (*a*) The application required by the article should be made in a case where the crime was committed by the party before he entered the military service equally as where it was committed by him while in the service. (*b*) In the former case a more exact identification may perhaps reasonably be required. Ibid., par. 95.

The provisions of this article are applicable only when the officer or soldier is accused of a crime or offense "which is punishable by the laws of the land;" i. e., by the public law—statutes or constitution—of the particular State. (*c*) Ibid., par. 96.

The article is not applicable to a case of an offense committed against the laws of the United States, as, for instance, the statutes prohibiting the introduction of liquor into the Indian country. Nor is it applicable to a case of an offense committed in a place over and within which the jurisdiction of the United States is exclusive. (*d*) Ibid., par. 97.

The party should be surrendered upon proper application, though the offense be one of which a military court has jurisdiction concurrently with the civil courts, unless, indeed, the military jurisdiction has already duly attached (by means of arrest or service of charges with a view to trial), in which case the prisoner may be surrendered or not as the proper authority may determine. A soldier under a sentence of confinement imposed by court-martial can not, in general, properly be surrendered under this article. In such a case the civil authorities should regularly defer their application till the military punishment has been executed or remitted. (*e*) Where a soldier, duly surrendered under this article and allowed to go on bail, was thereupon returned to duty, *held* that it was within the spirit of the article for the department commander to instruct the commanding officer of such soldier to cause him to appear for trial at the proper time. Ibid., par. 98.

An officer or soldier accused as indicated by the article, though he may be willing and may desire to surrender himself to the civil authorities, or to appear before the civil court, should not in general be permitted to do so, but should be required to await the formal application. Ibid., par. 100.

In view of the obligation devolved by this article upon officers of the Army, a post commander would properly be required to apprehend and hold for surrender to the civil authorities a soldier who, having been once surrendered under the article, had escaped and returned to the post. (*f*) Ibid. 53, par. 8.

The term "any of the United States," employed in this article, *held* properly to include any and all of the political members of our governmental system, and to embrace an organized Territory equally as a State. Ibid., par. 101.

The article is directory, not jurisdictional. It does not limit the action to be taken by the military authorities to cases where the application is made by the party; it may be made in his behalf. It does not place a soldier who has committed a crime and been indicted therefor beyond the reach of the civil power if the person injured does not apply for his surrender. In a case—one of murder, for example—where there can be no personal application, the State properly takes the place of the individual. And so in all other cases where an indictment has been found or a warrant of arrest has been issued, the State, with which resides the jurisdiction and the power to prosecute, may make the demand, and upon its demand it is the duty of the commanding officer to surrender the party charged. Ibid., par. 102.

The article contemplates only cases in which an "officer or soldier is accused," etc. So, *held* that it did not apply to a case of a civilian (Chinese) laundryman employed and residing at a military post accused of a civil crime. While it would be equally desirable that the surrender should be made in such a case, such sur-

---

[a] II Opin. Att. Gen., 10.

[b] See G. O. 29, Department of the Northwest, 1864, where it is remarked that there is an especial obligation to surrender the soldier where the crime was committed by him before entering the military service.

[c] As to the meaning of the term "laws of the land," especially with reference to municipal ordinances, see Vanzant *v.* Waddell, 2 Yerger, 270; State Bk. *v.* Cooper, ibid., 605; Horn *v.* People, 26 Mich., 228. In XXI Opin. Att. Gen., 88 (published in circular 15, A. G. O., 1894), it was held that a municipal ordinance is within the expression "laws of the land," as used in the fifty-ninth article of war, and that a soldier violating such an ordinance and escaping to a military reservation should be delivered to the civil authorities for trial on demand.

[d] It is further held, in Ex parte McRoberts, 16 Iowa, 603, that the provisions of the article apply only to officers and soldiers while within the immediate control and jurisdiction of the military authorities, and therefore do not apply to a case of a soldier absent on furlough; but that such a soldier, pending his furlough, may be arrested in the same manner as any civilian.

[e] Compare VI Opin. Att. Gen., 423.

[f] See a case to a similar effect published in G. O. 7, Department of the South, 1871.

Certain crimes of fraud against the United States.
Mar. 2, 1863, c. 67, s. 1, v. 12, p. 696.
60 Art. of War.
Making false claim.

ART. 60. Any person in the military service of the United States who makes or causes to be made any claim against the United States, or any officer thereof, knowing such claim to be false or fraudulent; or

Presenting false claim.

Who presents or causes to be presented to any person in the civil or military service thereof, for approval or payment, any claim against the United States or any officer thereof, knowing such claim to be false or fraudulent; or

Agreement to obtain payment of false claim.

Who enters into any agreement or conspiracy to defraud the United States by obtaining, or aiding others to obtain, the allowance or payment of any false or fraudulent claim; or

False paper.

Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States, or against any officer thereof, makes or uses, or procures or advises the making or use of, any writing or other paper, knowing the same to contain any false or fraudulent statement; or

Perjury.

Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or any officer thereof, makes, or procures or advises the making of, any oath to any fact or to any writing or other paper, knowing such oath to be false; or[1]

---

render would be a matter of comity, not of official duty under the article. Ibid., par. 103.

This article does not apply to the service by a sheriff on an officer or soldier of a subpœna to appear as a witness before a civil court. In such a case, indeed, the civil official should, as a matter of comity, apply first to the post commander, whether or not the post be within the exclusive jurisdiction of the United States. It will then be for the commander, in comity, to facilitate the service and to issue the necessary permit or order to enable and cause the officer or soldier to attend the court. Ibid., par. 104.

This article does not apply to a charge of introducing liquor into the Indian country or to a reservation, *exclusive* jurisdiction over which has been ceded to the United States. (Ibid., par. 97.) Its application in time of war is discretionary with the military authorities. Ibid., par. 105.

[1] The offense known as the duplicating of pay rolls, where it involves, as it generally does, a presenting or a causing to be presented of a false or fraudulent claim against the United States, is properly chargeable under this article. Ibid., par. 107.

When an officer who had been sentenced to forfeit all pay due, but whose sentence had not yet been approved or published, presented pay accounts to the paymaster for his pay and received the amount of the same, *held* that he was not triable for the offense of presenting a fraudulent claim under this article. Ibid., par. 108.

Where a soldier, in order to procure his discharge from the service and the payment thereupon of a considerable amount not in fact due him, forged the name of his commanding officer on a discharge paper and a "final statement" paper, and presented the same to a paymaster, *held* that he was chargeable with offenses defined in the second, fourth, and sixth paragraphs of this article. Ibid., par. 109.

Where a disbursing officer, having caused a creditor of the United States to sign a receipt in blank, paid him a less sum than was due him, and afterwards inserted the true amount due in the receipt, so as to obtain credit with the United States for

Forgery.

Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or any officer thereof, forges or counterfeits, or procures or advises the forging or counterfeiting of, any signature upon any writing or other paper, or uses, or procures or advises the use of, any such signature, knowing the same to be forged or counterfeited; or[1]

Delivering less property than receipt calls for.

Who, having charge, possession, custody, or control of any money or other property of the United States, fur-

---

the greater sum, *held* that he was chargeable with the offense defined in the seventh paragraph of this article. Ibid. 56, par. 5.

Where an officer, by collusion with a contractor, who had contracted for the delivery of military supplies, received for a pecuniary consideration from the latter a less amount of supplies than the United States was entitled to under the contract, while at the same time giving him a voucher certifying on its face the delivery of the whole amount, *held* that such officer was chargeable with an offense of the class defined in the eighth paragraph of this article. Ibid., par. 110.

The offense of stealing, indicated in the 9th paragraph of this article, consists in a larceny of "property of the United States furnished or intended for the military service." Except in time of war larceny of *other* property can be charged as a military offense only when cognizable under Article 62, as prejudicing good order and military discipline. Ibid., par. 113.

Section 5494, Revised Statutes, provides that the refusal of any person charged with the disbursement of public moneys promptly to transfer or disburse the funds in his hands "upon the legal requirement of an authorized officer, shall be deemed, upon the trial of any indictment against such person for embezzlement, as *prima facie* evidence of such embezzlement." Applying this rule to a military case, it is clear that, in the event of such a refusal by a disbursing officer of the Army, the burden of proof would be upon him to show that his proceeding was justified, and that it would not be for the prosecution to show what had become of the funds. So, where an acting commissary of subsistence on being relieved failed to turn over the public moneys in his hands to his successor or to his post commander when ordered to do so, or to produce such moneys, exhibit vouchers for the same, or otherwise account for their use, when so required by his department commander; held that he was properly charged with and convicted of an intent to defraud the United States. It is the act of the misappropriation described itself which constitutes the offense, irrespective of the purpose or motive of such act. Ibid., par. 114.

Where an officer of the quartermaster department used teams, tools, and other public property, in his possession as such officer, in erecting buildings, etc., for the benefit of an association, composed mainly of civilians, of which he was a member; *held* that he was properly chargeable with a misappropriation of property of the United States. And similarly *held* of a loaning by such an officer of public property (corn) to a contractor, for the purpose of enabling him to fill a contract made with the United States through another officer. (*a*) The fact that a practice exists in a post or other command of making a use (not authorized by regulation or order) of government property for private purposes, or of loaning it in the prospect of a prompt return, can constitute no defense to a charge for such act as an offense under this article. Such practice, however, if sanctioned, though improperly, by superior authority, may be shown in evidence in mitigation of sentence. Ibid., par. 112.

A charge of embezzlement under this article would not lie where the money or property embezzled was not public money, but belonged to the post, company, or exchange funds; such money not being public money within the scope of article 60. G. C. M. O. 27, War Dept., 1872; see, also, G. C. M. O. 4, ibid., 1873.

Under the grant of jurisdiction to a court-martial conferred by the 60th Article of War, providing that any person in the military service who misappropriates any money of the United States, "furnished or intended for the military service thereof," shall be punished, etc., such a court has no power to convict an officer of the Army for misappropriating money appropriated by Congress for the improvement of rivers and harbors. In re Carter, 97 Fed. Rep., 496. Such a conviction, however, may be had where the misappropriation of such funds is charged as a violation of article 62. Ibid.

---

[a] See G. C. M. O. 46, Hd. Qrs. Army, 1869.

nished or intended for the military service thereof, knowingly delivers, or causes to be delivered, to any persons having authority to receive the same, any amount thereof less than that for which he receives a certificate or receipt; or

Giving receipts without knowing truth of.

Who, being authorized to make or deliver any paper certifying the receipt of any property of the United States, furnished or intended for the military service thereof, makes, or delivers to any person, such writing, without having full knowledge of the truth of the statements therein contained, and with intent to defraud the United States; or[1]

Stealing, wrongfully selling, etc.

Who steals, embezzles, knowingly and willfully misappropriates, applies to his own use or benefit, or wrongfully or knowingly sells or disposes of any ordnance, arms, equipments, ammunition, clothing, subsistence stores, money, or other property of the United States, furnished or intended for the military service thereof; or[1]

Buying public military property.

Who knowingly purchases, or receives in pledge for any obligation or indebtedness, from any soldier, officer, or

---

[1] Where a quartermaster used temporarily with his private carriage a pair of Government horses in his charge, *held* that he was not properly chargeable with embezzlement, but with the offense, under this article, of "knowingly applying to his own use and benefit property of the United States, furnished for the military service." Dig. Opin. J. A. G., par. 115.

The misappropriation specified in the article need not be an appropriation for the personal profit of the accused. The words "to his own use or benefit" qualify only the term "applies." Ibid., par. 116.

In charging a stealing, embezzlement, misappropriation, etc., under this article, it is not necessary to allege that the funds or property were "furnished or intended for the military service;" it is sufficient if this fact appears from the evidence, and in most cases it will be inferable from the very nature of the property itself—as where, for example, the same consists of "quartermaster stores," "subsistence stores," "ordnance stores," etc. (*a*) Ibid., par. 119.

In charging embezzlement under this article, it is not necessary, if the fact sufficiently appears from other allegations, to aver in terms in the specification that the money or property was "furnished or intended for the military service of the United States." Ibid., 58 par. 14.

Repeated false statements of the accused relative to the public moneys for which he was accountable are competent evidence going to sustain a charge of embezzlement under this article. Ibid., par. 120.

The application or operation of this article is in no manner affected by the enactment of March 3, 1875, chapter 144, constituting embezzlement of public property a felony and making it triable by a United States court, such act being a purely civil statue. Ibid., par. 121.

Where an officer, for the purpose of obtaining the allowance of a fraudulent claim against the United States, willfully induced another to make to the United States a lease of premises for public use, containing a false and fraudulent statement, *held* that he was chargeable with an offense of the class specified in the fourth paragraph of this article. Ibid., par. 122.

---

[a] Whether this provision in subjecting officers and soldiers discharged, mustered out, etc., and become civilians, to trial by court-martial in the same manner as if they were a part of the Army is constitutional is a question which is believed not to have been judicially passed upon. Probably originally inserted in the act of March 2, 1863 (from which the article is repeated) as in the nature of a war measure, it was in fact relied upon as giving jurisdiction in but a small number of cases even during the war, and since that period no case is known in which the exceptional jurisdiction conferred has been taken advantage of.

other person who is a part of or employed in said forces or service, any ordnance, arms, equipments, ammunition, clothing, subsistence stores, or other property of the United States, such soldier, officer, or other person not having lawful right to sell or pledge the same,

Shall, on conviction thereof, be punished by fine or imprisonment, or by such other punishment as a court-martial may adjudge, or by any or all of said penalties. And if any person, being guilty of any of the offenses aforesaid, while in the military service of the United States, receives his discharge, or is dismissed from the service, he shall continue to be liable to be arrested and held for trial and sentence by a court-martial, in the same manner and to the same extent as if he had not received such discharge nor been dismissed. *Act of March 2, 1901 (31 Stat. L., 951).*

Conduct unbecoming an officer and gentleman. **61 Art. of War.**

ART. 61. Any officer who is convicted of conduct unbecoming an officer and a gentleman shall be dismissed from the service.[1]

---

[1] To constitute an offense under this article the conduct need not be "scandalous and infamous." These words, contained in the original article of 1775, were dropped in the form adopted in 1806. Nor is it essential that the act should compromise the honor of the officer. (*a*) It is only necessary that the conduct should be such as is at once disgraceful or disreputable and manifestly unbefitting both an officer of the Army and a gentleman. (*b*) An act, however, which is only slightly discreditable is not, in practice, made the subject of a charge under this article. The article, in making the punishment of dismissal imperative in all cases, evidently contemplates that the conduct, while unfitting the party for the society of men of a scrupulous sense of decency and honor, shall exhibit him as unworthy to hold a commission in the Army. Dig. Opin. J. A. G., par. 123.

Knowingly making to a superior a false official report *held* chargeable under this article. So of a deliberately false official certificate as to the truth or correctness of an official voucher, roll, return, etc. So of any deliberately false official statement, written or verbal, of a material character. So where an officer caused the sergeant of the guard to enter in the guard book a false official report that he (the officer) had duly visited the guard at certain hours as officer of the day, when he had in fact been guilty of a neglect of duty in this particular, and thereupon himself signed such report and submitted it to his post commander, *held* that his conduct was chargeable as an offense under this article. Ibid., par. 124.

The following acts, committed in a particular case, *held* to be offenses within this article: Preferring false accusations against an officer; attempting to induce an officer to join in a fraud upon the United States; attempt at subornation of perjury. Ibid., par. 125. For other acts chargeable under this article see paragraphs 126–131, Ibid.

To justify a charge under this article it is not necessary that the act or conduct of the officer should be immediately connected with or should directly affect the military service. It is sufficient that it is morally wrong and of such a nature that, while dishonoring or disgracing him as a gentlemen, it compromises his character and position as an officer of the Army. Ibid., par. 132.

Thus, though a mere neglect on the part of an officer to satisfy his private pecuniary obligations will not ordinarily furnish sufficient grounds for charges against him, yet where the debt has been dishonorably incurred—as where money has been bor-

---

[a] G. O. 25, Department of the Missouri, 1867.

[b] "An officer of the Army is bound by the law to be a gentleman." Attorney-General Cushing, VI Opins., 417. See definitions or partial definitions of the class of offenses contemplated by this article in G. O. 45, Army of the Potomac, 1864; G. O. 29, Department of California, 1865; G. O. 7, Department of the Lakes, 1872, G. C. M. O. 69., Department of the East, 1870; G. C. M. O. 41, Headquarters of Army, 1879.

rowed under false promises or representations as to payment or security, or where the nonpayment has been accompanied by such circumstances of fraud, deceit, evasion, denial of indebtedness, etc., as to amount to dishonorable conduct—the continued nonpayment, in connection with the facts or circumstances rendering it dishonorable, may properly be deemed to constitute an offense chargeable under this article. (*a*) Ibid., par. 133.

Where an officer, in payment of a debt, gave his check upon a bank, representing at the same time that he had funds there, when in fact, as he was well aware, he had none, *held* that he was amenable to a charge under this article. Ibid., par. 134.

Neglect or refusal to pay honest debts may constitute an offense under this article where so repeated or persistent as to furnish reasonable ground for inferring that the officer designs or desires to avoid or indefinitely defer a settlement. This especially where the debts are due to soldiers for money borrowed from or held in trust for them. Ibid., par. 135. See also par. 138, ibid.

An indifference on the part of an officer to his pecuniary obligations, of so marked and inexcusable a character as to induce repeated just complaints to his military commander or the Secretary of War by his creditors, and to bring discredit and scandal upon the military service, *held* to constitute an offense within the purview of this article. (*b*) Ibid., par. 136.

Where certain officers of a colored regiment made a practice of loaning to men of the regiment small amounts of money, for which they charged and received in payment at the rate of two dollars for one at the next pay day, *held* that they were properly convicted of a violation of this article. Ibid., par. 137.

Where an officer stationed in Utah was married there by a Mormon official to a female, with whom he lived as his wife, although having at the same time a legal wife residing in the States, *held* that he might properly be brought to trial by general court-martial for a violation of this article. So *held* of an officer who committed bigamy by publicly contracting marriage in the United States while having a legal wife living in Scotland whom he had abandoned. Ibid., par. 139.

Abusing and assaulting his wife by an officer at a military post, *held* chargeable as an offense under this article. Ibid., par. 140.

The institution by an officer of fraudulent proceedings against his wife for divorce, and the manufacture of false testimony to be used against her in the suit, in connection with an abandonment of her and neglect to provide for her support, *held* to constitute "conduct unbecoming an officer and a gentleman" in the sense of this article. Ibid., par. 141.

According to the accepted principle of interpretation, by which articles of war enjoining a specific punishment or punishments are held to be in this particular both mandatory and exclusive, no sentence other than one of simple dismissal can legally be adjudged upon a conviction under this article. A sentence which adds to dismissal any other penalty or penalties, as disqualification for office, forfeiture of pay, imprisonment, etc., is valid and operative only as to the dismissal, and as to the rest should be formally disapproved as being unauthorized and of no effect. Ibid., par. 142.

The use of abusive language toward a commanding officer may constitute an offense under this article. But, both as a matter of correct pleading and because the twentieth article authorizes a punishment less than dismissal, the language should be so particularized as to show that it constituted an offense more grave than the mere disrespect which is the subject of the latter article. A specification not thus setting forth and characterizing the epithets or words employed will be subject to a motion to make definite or strike out. Ibid., par. 143.

The mere acceptance by an officer of compensation from private parties (civilians) whom, by permission of his superior, he assists in a private undertaking, though it may be an indelicate act, is not an offense under this article. Of the propriety of such conduct an officer must judge for himself. Ibid., par. 144.

See, as to the duplication of pay accounts, ibid., pars. 145, 146.

Held that a continued neglect, without adequate excuse, to satisfy a pecuniary obligation long overdue, after specific assurance given of speedy payment, was a dishonorable act, constituting an offense under this article. Ibid., par. 138.

---

[a] Cases of officers made amenable to trial by court-martial, under this article, for the nonfulfillment of pecuniary obligations to other officers, enlisted men, post traders, and civilians, are found in the following general orders of the War Department and Headquarters of the Army: No. 87, of 1866; Nos. 3, 55, 64, of 1869; No. 15, of 1870; No. 17, of 1871; Nos. 22, 46, of 1872; No. 10, of 1873; Nos. 25, 50, 68, 82, of 1874; No. 25, of 1875; No. 100, of 1876; No. 46, of 1877.

[b] See, on the subject of these complaints, the circular issued originally from the War Department (A. G. O.) on February 8, 1872, in which the Secretary of War "declares his intention to bring to trial by court-martial," under the sixty-first article of war, "any officer who, after due notice, shall fail to quiet such claims against him."

Crimes and disorders to prejudice of military discipline.
62 Art. War.

ART. 62. All crimes not capital, and all disorders and neglects, which officers and soldiers may be guilty of, to the prejudice of good order and military discipline, though not mentioned in the foregoing articles of war, are to be taken cognizance of by a general, or a regimental, garrison, or field officers' court-martial, according to the nature and degree of the offense, and punishable at the discretion of such court.[1]

---

[1] The word "crimes" in this article, distinguished as it is from "neglects" and "disorders," means military offenses of a more serious character than these, including such as are also civil crimes, as homicide, robbery, arson, larceny, etc. "Capital" crimes (i. e., crimes capitally punishable), including murder, or any grade of murder made capital by statute, can not be taken cognizance of by courts-martial under this article. (As to the jurisdiction of courts-martial in cases of murder, etc., in time of war, see art. 58, *supra*, note.) A crime which is in fact murder, and capital by statute of the United States or of the State in which committed, can not be brought within the jurisdiction of a court-martial under this article by charging it as "manslaughter, to the prejudice," etc., or simply as "conduct to the prejudice," etc. If the specification or the proof shows that the crime was murder and a capital offense, the court should refuse to take jurisdiction, or to find or sentence. If it assume to do so, the proceedings should be disapproved as unauthorized and void. Ibid., par. 148.

The term "to the prejudice of good order and military discipline" qualifies, according to the accepted interpretation, the word "crimes" as well as the words "disorders and neglects." Thus, the crime of larceny (sometimes charged as "theft" or "stealing") is held chargeable under this article when it clearly affects the order and discipline of the military service. Stealing, for example, from a fellow-soldier or from an officer (or stealing of public money or other public property where the offense is not more properly a violation of article 60), is generally so chargeable. And so of any other crime (not capital) the commission of which has prejudiced military discipline, as, for example, manslaughter (or homicide not amounting to murder) of a soldier; assault with intent to kill a fellow-soldier; forgery of the name of a disbursing or other military officer to a Government check or draft, or forgery of an officer's name to a check on a bank (and this whether or not anything was in fact lost by the Government or the bank or officer); forgery in signing the name of a fellow-soldier to a certificate of indebtedness to a sutler, or to an order on a paymaster; embezzlement or misappropriation of the property of an officer or soldier.[a] Ibid., par. 149.

Where an offense is specifically provided for in any of the Articles of War prior to the sixty-second, the grant of jurisdiction to a court-martial to try and punish such offense is conferred by the particular article which mentions it, and not by the general language of the sixty-second article, providing for the trial and punishment of offenses not capital, and all disorders, etc., though not mentioned in the preceding articles. *In re* Carter, 97 Fed. Rep., 496.

A crime, disorder, or neglect, cognizable under this article, may be charged either by its name simply, as "larceny," "drunkenness," "neglect of duty," etc.; or by its name with the addition of the words, "to the prejudice of good order and military discipline;" or simply as "conduct to the prejudice of good order and military discipline;" or as "violation of the sixty-second article of war." It is immaterial in which form the charge is expressed, provided the specification sets forth facts constituting an act prejudicial to good order and military discipline. Whenever the charge and specification taken together make out a statement of an act clearly thus prejudicial, etc., the pleading will be regarded as substantially sufficient under this general article. Ibid., par. 151.

A charge of "conduct to the prejudice," etc., with a specification setting forth merely trials and convictions of the accused for previous offenses, is not a pleading of an offense under this article, or of any military offense. So of a charge of "habitual drunkenness, to the prejudice," etc., with a specification setting forth instances in which the accused has been sentenced for acts of drunkenness. Such charges, indeed,

---

[a] For cases falling within the scope of this article see Dig. Opin. J. A. G., paragraphs 149, 150, and 159; for cases not coming under the terms of the article see ibid., par. 160.

ART. 63. All retainers to the camp, and all persons serving with the armies of the United States in the field, though not enlisted soldiers, are to be subject to orders, according to the rules and discipline of war.[1]

Retainers of camp.
63 Art. War.

---

are in contravention of the principle that a party shall not be twiec tried for the same offense. So, a specification under the charge of "conduct to the prejudice," etc., which sets forth not a distinct offense, but simply the result of an aggregation of similar offenses, is insufficient in law. Where the specifications to such a charge, in a case of an officer, set forth that the accused was "frequently" drunk, "frequently" absented himself without authority from his command, etc., *held* that these specifications were properly struck out by the court on the motion of the accused. In such a case the only correct pleading is a general charge under this article, with specifications setting forth—each separately—some particular and specific instance of offense. Ibid., par. 152.

Whether acts committed against *civilians* are offenses within this article is a question to be determined by the circumstances of each case, and in regard to which no general rule can be laid down. If the offense be committed on a military reservation, or other premises occupied by the Army, or in its neighborhood, so as to be—so to speak—in the constructive presence of the Army; or if committed by an officer or soldier while on duty, particularly if the injury is done to a member of the community whom the offender is specially required to protect; or if committed in the presence of other soldiers, or while the offender is in uniform; or if the offender use his military position or that of another for the purpose of intimidation or other unlawful influence or object—the offense will, in general, properly be regarded as an act prejudicial to good order and military discipline, and cognizable by a court-martial under this article. The judgment on the subject of a court of military officers, experts as to such cases, confirmed by the proper reviewing commander, should be reluctantly disturbed. As to a charge of embezzlement of public funds charged under this article, see Dig. Opin. J. A. G., par. 154, with notes thereon. See also G. C. M. O. 34, H. Q. Army, 1866; Carter *v.* McLaughry, 105 Fed. Rep., 614; S. O. 172, A. G. O., 1899; *In re* Carter, 97 Fed. Rep., 496.

[1] To determine when an army is "in the field" is to decide the question raised. These words imply military operations with a view to an enemy. Hostilities with Indians seem to be as much within their meaning as any other kind of warfare. To enable the officers of an army to preserve good order and discipline is the object of this article, and these may be as necessary in the face of hostile savages as in the front of any other enemy. When an army is engaged in offensive or defensive operations, I think it is safe to say that it is an army "in the field."

To decide exactly where the boundary line runs between civil and military jurisdiction, as to the civilians attached to an army, is difficult; but it is quite evident that they are within military jurisdiction, as provided for in said article, when their treachery, defection, or insubordination might endanger or embarrass the army to which they belong in its operations against what is known in military phrase as "an enemy." Possibly the fact that troops found in a region of country chiefly inhabited by Indians, and remote from the exercise of civil authority, may enter into the description of "an army in the field." Persons who attach themselves to an expedition against hostile Indians may be understood as agreeing that they will submit themselves, for the time being, to military control. XIV Opin. Att. Gen. 22, G. O. 17, A. G. O., 1872.

The accepted interpretation of this article is that it subjects (in time of war) the classes of persons specified not only to military discipline and government in general, but also to the jurisdiction of courts-martial (upon the theory, probably, that they are thus made, for the time being, a part of the Army). Individuals, however, of the class termed "retainers to the camp," or officers' servants and the like, as well as camp followers generally, have rarely been subjected to trial in our service. For breaches of discipline committed by them the punishment has generally been expulsion from the limits of the camp and dismissal from employment. Dig. Opin. J. A. G., par. 161.

The discipline authorized by the article has mainly been applied to the description of "persons serving with the armies of the United States in the field"—that is to say, civilians serving in a quasi-military capacity in connection with troops, in time of war and on its theater. Thus, during the late war, civilians of the following classes were, in repeated cases, held amenable, under this article, to the military jurisdiction, and subjected to trial and punishment by courts-martial: Teamsters

July 29, 1861, c. 25, s. 3, v. 12, pp. 281, 284; Mar. 2, 1863, c. 67, s. 1, v. 12, p. 696.
64 Art. War.

ART. 64. The officers and soldiers of any troops, whether militia or others, mustered and in pay of the United States shall at all times and in all places be governed by the Articles of War and shall be subject to be tried by courts-martial.[1]

---

employed with wagon trains, watchmen, laborers, and other employees of the quartermaster, subsistence, engineer, ordnance, provost-marshal, etc., departments; ambulance drivers; telegraph operators; interpreters; guides; paymasters' clerks; veterinary surgeons; "contract" surgeons, nurses, and hospital attendants; conductors and engineers of railroad trains operated upon the theater of war for military purposes; officers and men employed on Government transports, etc. But the mere fact of employment by the Government pending a general war does not render the civil employee so amenable. The employment must be in connection with the army in the field and on the theater of hostilities. Ibid., par. 162.

Held (June, 1863) that the force employed in the "ram fleet" on Western waters was properly a contingent of the Army rather than of the Navy, and accordingly that civilian commanders, pilots, and engineers employed upon such fleet during the war and before the enemy were persons serving with the armies in the field in the sense of this article, and therefore amenable to trial by court-martial. Ibid., par. 163.

Civil employees of the United States serving with the army in the field during active warfare with hostile Indian tribes *held* amenable to trial by court-martial under this article. A civilian who acted as guide to a command operating in a hostile movement during an Indian war *held* so triable. Ibid., par. 164.

The jurisdiction authorized by this article can not be extended to civilians employed in connection with the Army in time of peace, nor to civilians employed in such connection during the period of an Indian war but not on the theater of such war. In view of the limited theater of Indian wars, this exceptional jurisdiction is to be extended to civilians, on account of offenses committed during such wars, with even greater caution than in a general war. Ibid., par. 165.

Civilians can not legally be subjected to military jurisdiction by the authority of this article after the war (whether general or against Indians), pending which their offenses were committed, has terminated. The jurisdiction, to be lawfully exercised, must be exercised during the status belli. Ibid., par. 166.

A civil employee of the United States in time of peace is most clearly not made amenable to the military jurisdiction and trial by court-martial by the fact that he is employed in an office connected with the administration of the military branch of the Government. Such employment does not make him a part of the military establishment, nor is his offense, however nearly it may affect the military service, "a case arising in the land forces" in the sense of article 5 of the amendments to the Constitution. So *held* (June, 1877) that a civilian clerk employed in time of peace in the office of the chief quartermaster at San Francisco was manifestly not amenable, under this article or otherwise, to trial by court-martial for the embezzlement or misapplication of Government funds appropriated for the Quartermaster Department.(*a*) And remarked that if this official could be made liable to such juristion, all the male and female clerks employed in the War Department might upon the same principle be held thus amenable for offenses against the Government committed in connection with their duties. And so *held* in the case of a civilian clerk employed at Camp Robinson, Nebraska, charged with conspiring with contractors to defraud the United States, the post not being within the theater of any Indian war or hostilities pending at the period of the offense.(*b*) Ibid., par. 167.

Held (April, 1877) that superintendents of national cemeteries, being no part of the Army, but civilians (see section 4874, Revised Statutes), were clearly not amenable to military jurisdiction or trial under this article or otherwise.(*c*) Ibid., par. 168.

[1] It is a general principle, confirmed by this article, that military offenses are not territorial (see Manual for Courts-Martial, p. 14). So *held* that an officer who exhibited himself in an intoxicated condition at a public ball in Mexico, though not present in any military capacity, was amenable for his offense to the jurisdiction of a court-martial in Texas. Ibid., par. 169; Houston *v.* Moore, 5 Wh., 20.

---

[a] See the confirmatory opinion in this case of the Attorney-General of May 15, 1878, XVI Opin., 139.

[b] See opinion, to a similar effect, of the Attorney-General of June 15, 1878, XVI Opins., 48.

[c] See, to the same effect, the opinion of the Attorney-General referred to in note *a*.

Arrest of officers accused of crimes. 65 Art. War.

ART. 65. Officers charged with crime[1] shall be arrested and confined in their barracks, quarters, or tents, and deprived of their swords by the commanding officer. And any officer who leaves his confinement before he is set at liberty by his commanding officer shall be dismissed from the service.[2]

Soldiers accused of crimes. 66 Art. War.

ART. 66. Soldiers charged with crimes shall be confined until tried by court-martial or released by proper authority.[3]

Receiving prisoners. 67 Art. War.

ART. 67. No provost-marshal, or officer commanding a guard, shall refuse to receive or keep any prisoner committed to his charge by an officer belonging to the forces of the United States; provided the officer committing shall,

---

[1] The term "crime" is here employed in a general sense, referring to offenses of a military character as well as to those of a civil character which are cognizable by court-martial.(*a*) An offense in violation of this article is only committed when an officer confined in "close arrest" to his quarters leaves the same without authority. A breach of a mere formal arrest or of any arrest not accompanied by confinement to quarters would be an offense not within this article, but under article 62. Ibid., par. 170.

Simply disobeying an order to proceed and report in arrest to a certain commander *held* not an offense chargeable under this article. Ibid., par. 171.

[2] Where an officer in close arrest was permitted by his commanding officer to leave temporarily his confinement, *held* that his delaying his return for a brief period beyond the time fixed therefor did not properly constitute an offense under this article. Ibid., par. 172.

Though any unauthorized leaving of his confinement by an officer in close arrest is, strictly, a violation of the article, it would seem in view of the severe mandatory punishment prescribed that an officer should not in general be brought to trial under the same unless his act was of a reckless or deliberately insubordinate character. Ibid., par. 173.

It is no defense to a charge of breach of arrest in violation of this article that the accused is innocent of the offense for which he was arrested.(*b*) It is a defense, however, that subsequently to the original confinement the accused has been put on duty or allowed to go on duty, provided that before the breach assigned he has not been duly rearrested and reconfined.(*c*) Ibid., 78, par. 5.

The requirement of this article that an offender "shall be dismissed" is held to be exclusive of any other punishment. A sentence of dismissal with forfeiture of pay is unauthorized and inoperative as to the forfeiture, and as to this should be disapproved. Ibid., par. 174. See 61st article. See also the title "Arrest and confinement" in the chapter entitled MILITARY TRIBUNALS. For a case arising under this article in which breach of arrest was charged see G. O., No. 198, A. G. O. of 1863.

[3] Soldiers held in military arrest, while they may be subjected to such restraint as may be necessary to prevent their escaping or committing violence, can not legally be subjected to any punishment. The imposition of punishment upon soldiers while thus detained has been on several occasions emphatically denounced by department commanders.(*d*) Dig. Opin. J. A. G., par. 175.

The word "crimes" as used in this article is construed to mean serious military offenses. So that a soldier will not properly be "confined" where not charged with one of the more serious of the military offenses—in other words, where charged only with an offense of a minor character. Ibid., par. 176. See the title "Arrest and confinement" in the chapter entitled MILITARY TRIBUNALS.

---

[a] Compare Wolton *v.* Gavin, 16 Ad. & El., 66, 68; Simmons, sec. 360.

[b] Hough (Practice), 494.

[c] Hough (Precedents), 19.

[d] See, for example, the remarks of such commanders in G. O., 23, Department of the East, 1863; G. O., 26, Department of California, 1866; G. O., 23, Department of the Lakes, 1870; G. O., 106, Department of Dakota, 1871. And compare remarks of Justice Story in Steere *v.* Field, 2 Mason, 516,

at the same time, deliver an account in writing, signed by himself, of the crime charged against the prisoner.[1]

Report of prisoners.
68 Art. War.

ART. 68. Every officer to whose charge a prisoner is committed shall, within twenty-four hours after such commitment, or as soon as he is relieved from his guard, report in writing, to the commanding officer, the name of such prisoner, the crime charged against him, and the name of the officer committing him; and if he fails to make such report, he shall be punished as a court-martial may direct.

Releasing prisoner without authority; escapes.
69 Art. War.

ART. 69. Any officer who presumes, without proper authority, to release any prisoner committed to his charge, or suffers any prisoner so committed to escape, shall be punished as a court-martial may direct.[2]

Duration of confinement.
70 Art. War.

ART. 70. No officer or soldier put in arrest shall be continued in confinement more than eight days, or until such time as a court-martial can be assembled.[3]

Copy of charges and time of trial.
July 17, 1862, c. 200, s. 11, v. 12, p. 595.
71 Art. War.

ART. 71. When an officer is put in arrest for the purpose of trial, except at remote military posts or stations, the officer by whose order he is arrested shall see that a copy of the charges on which he is to be tried is served upon him within eight days after his arrest, and that he is brought to trial within ten days thereafter, unless the necessities of the service prevent such trial; and then he shall be brought to trial within thirty days after the expiration of said ten days. If a copy of the charges be not served, or the arrested officer be not brought to trial, as herein required, the arrest shall cease. But officers released from arrest, under the provisions of this article, may be tried,

---

[1] In the English case of Wolton *v.* Gavin (16 Ad. and El., 70) it was decided that "a commanding officer receiving a soldier charged with desertion by a noncommissioned officer, who delivered a written signed charge of the same, is justified under this article in detaining such soldier. He is bound to receive the prisoner under the article of war and he is not liable to an action for so doing. It makes no difference whether the crime be civil or military. The fact that a man is *prima facie* a soldier, and enlisted, is sufficient to bring him under the article of war. The duty of receiving arises eo instanti—as soon as he is presented.

If such imprisonment proves illegal, the committing officer becomes responsible, the duty of the officer commanding the guard being ministerial merely. See, in this connection, the case of McCall *v.* McDowell, 1 Abbott, 212.

[2] General Order 42 of 1901, fixing the maximum punishments, appoints different limits of punishment for willfully and for negligently allowing an escape as separate offenses. A charge for suffering an escape under this article should therefore indicate, in the specification, whether the act is alleged to be willful or negligent only. Ibid., 79, par. 1.

[3] Detaining soldiers in arrest for long and unreasonable periods, when it is practicable to bring them to trial, is arbitrary and oppressive, and in contravention both of the letter and spirit of this article. Whether the delay in any case is to be regarded as so far unreasonable as properly to subject the commander responsible therefor to military charges or a civil action must depend upon the circumstances of the situation and the exigencies of the service at the time. (*a*) Ibid., par. 177 See the title "Arrest and confinement," in the chapter entitled MILITARY TRIBUNALS.

---

[a] Compare Blake's Case, 2 Maule & Sel., 428; Bailey *v.* Warden, 4 ibid., 400.

whenever the exigencies of the service shall permit, within twelve months after such release from arrest.[1]

Who may appoint general courts-martial. May 29, 1830, v. 4, p. 417; July 5, 1884, v. 23, p. 121. 72 Art. War.

ART. 72. Any general officer commanding an army, a territorial division, or a department, or colonel commanding a separate department, may appoint general courts-martial whenever necessary. But when any such commander is the accuser or prosecutor of any officer under his command, the court shall be appointed by the President, and its proceedings and sentence shall be sent directly to the Secretary of War, by whom they shall be laid before the President for his approval or orders in the case.[2] *Act of July 5, 1884* (*23 Stat. L.*, *121*).

---

[1] Though an officer, in whose case the provisions of this article in regard to service of charges and trial have not been complied with, is entitled to be released from arrest, he is not authorized to release himself therefrom. If he be not released in accordance with the article, he should apply for his discharge from arrest, through the proper channels to the authority by whose order the arrest was imposed, or other proper superior. Dig. Opin. J. A. G., par. 178.

The term "within ten days thereafter" *held* to mean after his arrest. Ibid., par. 179.

The fact that cases of officers put in arrest "at remote military posts or stations" are excepted from the application of the article does not authorize an abuse of the power of arrest in these cases. And where, in such a case, an arrest, considering the facilities of communication with the department headquarters and other circumstances, was in fact unreasonably protracted without trial, *held* that the officer was entitled to be released from arrest upon a proper application submitted for the purpose. Ibid., par. 181.

[2] See the title "Constitution and composition of general courts-martial," in the chapter entitled MILITARY TRIBUNALS. See also Mullan *v.* U. S., 23 Ct. Cls., 34.

Prior to the amendment of this article by the act of July 5, 1884, a colonel commanding a department was not authorized, as such, to convene a general court; otherwise, however, of a colonel assigned by the President to the command of a department according to his brevet rank of brigadier or major-general. Dig. Opin. J. A. G. 82, par. 4.

The objection that the convening commander was the "accuser" or "prosecutor" of the accused, being one going to the legal constitution of the court, may be raised before the court at any stage of its proceedings. (Or it may be taken to the reviewing officer with a view to his disapproving the proceedings, or may be made to the President, after the approval and execution of the sentence, with a view to having the same declared invalid, or to the obtaining of other appropriate relief.) Regularly, however, the objection, if known or believed to exist, should be taken at or before the arraignment. If the objection is not admitted by the prosecution to exist, the accused is entitled to prove it like any other issue. Ibid. 84, par. 8.

The provision of this article (and of article 73) that when the convening commander is "accuser or prosecutor" the court shall be convened by the President or "next higher commander," being expressly restricted to general courts, has, of course, no application to regimental or garrison courts. (But see Summary court.) The same principle, however, will properly be applied to proceedings before these courts if it can be done without serious embarrassment to the service. Ibid., par. 189.

A general court-martial, convened by the division commander (a major-general) duly acting as department commander in the absence of the regular department commander, is legally convened by a general officer commanding a department in the sense of this article. Ibid., par. 190.

The mere fact that a general court-martial is convened by a department commander does not make such commander an "accuser or prosecutor" in the sense of this article. (*a*) A department commander is not an "accuser or prosecutor" when, upon information of misconduct duly laid before him, he orders the acting judge-advocate of the department or the colonel commanding the regiment to proceed to bring the offender to trial, this being a part of his due and regular supervision and command. Ibid. 84, par. 11.

---

[a] See XVI Opin. Att. Gen., 109.

Who may appoint general courts-martial in times of war.
Dec. 24, 1861, v. 12, p. 330.
73 Art. War.

ART. 73. In time of war the commander of a division, or of a separate brigade of troops, shall be competent to appoint a general court-martial. But when such commander is the accuser or prosecutor of any person under his command, the court shall be appointed by the next higher commander.[1]

Judge-advocates.
74 Art. War.

ART. 74. Officers who may appoint a court-martial shall be competent to appoint a judge-advocate for the same.[2]

Sec. 2, July 27, 1892, v. 27, p. 278.

That whenever a court-martial shall sit in closed session the judge-advocate shall withdraw, and when his legal advice or his assistance in referring to recorded evidence is required it shall be obtained in open court. *Sec. 2, act of July 27, 1892 (27 Stat. L., 278).*

Composition of general courts-martial.
75 Art. War.

ART. 75. General courts-martial may consist of any number of officers from five to thirteen, inclusive; but they shall not consist of less than thirteen when that number can be convened without manifest injury to the service.[3]

When requisite number not at a post.
76 Art. War.

ART. 76. When the requisite number of officers to form a general court-martial is not present in any post or detachment, the commanding officer shall, in cases which require the cognizance of such a court, report to the commanding officer of the department, who shall thereupon order a court to be assembled at the nearest post or department at which there may be such a requisite number of officers, and shall order the party accused, with necessary witnesses, to be transported to the place where the said court shall be assembled.

Regular officers; on what courts may sit.
77 Art. War.

ART. 77. Officers of the Regular Army shall not be competent to sit on courts-martial to try the officers or soldiers of other forces, except as provided in Article 78.[4]

---

[1] See note 2, to article 72, supra. See also, as to the powers of certain commanders in this regard, paragraphs 192–198, ibid.

[2] See the title "Judge-advocate," in the chapter entitled MILITARY TRIBUNALS.

[3] Where, in the course of a trial, the number of the members of a general court-martial is reduced by reason of absence, challenge, or the relieving of members, the court may legally proceed with its business so long as five members, the minimum quorum, remain; otherwise where the number is thus reduced below five. Dig. Opin. J. A. G., par. 201.

While a number of members less than five can not be organized as a court or proceed with a trial, they may perform such acts as are preliminary to the organization and action of the court. Less than five members may adjourn from day to day, and where five are present and one of them is challenged the remaining four may determine upon the sufficiency of the objection. Ibid., par. 202.

A court reduced to four members, and thereupon adjourning for an indefinite period, does not dissolve itself. In adjourning it should report the facts to the convening authority and await his orders. He may at any time complete it by the addition of a new member or members and order it to reassemble for business. Ibid., par 203.

Where a court, though reduced by the absence of members, operation of challenges, etc., to below five members, yet proceeds with and concludes the trial, its further proceedings, including its finding and sentence (if any), are unauthorized and inoperative. Ibid., par. 204. See also paragraphs 205–207, ibid.

[4] See note 1, article 72, *ante.*

ART. 78. Officers of the Marine Corps, detached for service with the Army by order of the President, may be associated with officers of the Regular Army on courts-martial for the trial of offenders belonging to the Regular Army, or to forces of the Marine Corps so detached; and in such cases the orders of the senior officer of either corps, who may be present and duly authorized, shall be obeyed.[1]

Marine and Regular Army officers associated on courts.
78 Art. War. June 30, 1834, c. 132, s. 2, v. 4, p. 713.

ART. 79. Officers shall be tried only by general courts-martial, and no officer shall, when it can be avoided, be tried by officers inferior to him in rank.[2]

Officers triable by general courts-martial.
79 Art. War.

ART. 80. The commanding officer of each garrison, fort, or other place, regiment or corps, detached battalion, or company, or other detachment in the Army, shall have power to appoint for such place or command, or in his discretion for each battalion thereof, a summary court to consist of one officer to be designated by him, before whom enlisted men who are to be tried for offenses, such as were prior to the passage of the act to promote the administration of justice in the Army, approved October first, eighteen hundred and ninety, cognizable by garrison or regimental courts-martial, and offenses cognizable by field officers detailed to try offenders under the provisions of the eightieth and one hundred and tenth articles of war, shall be brought to trial within twenty-four hours of the time of the arrest, or as soon thereafter as practicable, except when the accused is to be tried by general court-martial; but such summary court may be appointed and the officer designated by superior authority when by him deemed desirable; and the officer holding the summary court shall have power to administer oaths and to hear and determine such cases, and when satisfied of the guilt of the accused

The summary court.
June 18, 1898, v. 30, p. 483.

---

[1] See note 1, article 72, *ante.*

[2] Whether the trial of an officer by officers of an inferior rank can be avoided or not is a question not for the accused or the court, but for the officer convening the court; and his decision (as indicated by the detail itself as made in the convening order) upon this point, as upon that of the number of members to be detailed, is conclusive. An officer, therefore, can not successfully challenge a member because merely of being of a rank inferior to his own. Dig. Opin. J. A. G., par. 210.

The statement sometimes added in orders convening courts-martials to the effect that "no officers other than those named can be detailed without injury to the service" is as superfluous and unnecessary for the purpose of excusing the detailing of officers junior to the accused as it is for accounting for the fact that less than the maximum number have been selected for the court. Ibid., 89, par. 2.

At the opening of a trial by court-martial it was objected by the accused that nine of the thirteen members as detailed were his inferiors in rank, and that the detailing of such inferiors could have been "avoided" without prejudice to the service. *Held*, that the objection was properly overruled by the court. Whether such a detail "can be avoided" is a question to be determined by the convening authority alone, and one upon which his determination is conclusive (*a*). Ibid., par. 211.

---

[a] See Mullan *v.* U. S., 140 U. S., 240.

adjudge the punishment to be inflicted, which said punishment shall not exceed confinement at hard labor for one month and forfeiture of one month's pay, and, in the case of a noncommissioned officer, reduction to the ranks in addition thereto;[1] that there shall be a summary court record kept at each military post and in the field at the headquarters of the proper command, in which shall be entered a record of all cases heard and determined and the action had thereon; and no sentence adjudged by said summary court shall be executed until it shall have been approved by the officer appointing the court, or by the officer commanding for the time being: *Provided*, That when but one commissioned officer is present with a command he shall hear and finally determine such cases: *And provided further*, That no one while holding the privileges of a certificate of eligibility to promotion shall be brought before a summary court, and that noncommissioned officers shall not, if they object thereto, be brought to trial before summary courts without the authority of the officer competent to order their trial by general court-martial, but shall in such cases be brought to trial before garrison, regimental, or general courts-martial, as the case may be.[2] *Act of June 18, 1898 (30 Stat. L., 483).*

* * * * * * *

The commanding officers authorized to approve the sentences of summary courts and superior authority shall have power to remit or mitigate the same. *Sec. 3, ibid.*

Post and other commanders shall, in time of peace, on the last day of each month, make a report to the department headquarters of the number of cases determined by summary court during the month, setting forth the offenses committed and the penalties awarded, which report shall be filed in the office of the judge-advocate of the department, and may be destroyed when no longer of use. *Sec. 4, ibid.*

* * * * * * *

This act shall take effect sixty days after its passage.[2] *Sec. 7, ibid.*

Regimental courts.
July 17, 1862, c. 201, s. 7, v. 12, p. 598.
81 Art. War.

ART. 81. Every officer commanding a regiment or corps shall, subject to the provisions of article eighty, be competent to appoint, for his own regiment or corps, courts-martial, consisting of three officers, to try offenses not capital.[1]

---

[1] For an extension of the power of this court to punish, see article 83, *post*.

[2] This enactment replaces the Eightieth article of war, which was expressly repealed by section 2 of the act of June 18, 1898 (30 Stat. L., 483).

Garrison courts.
July 17, 1862, c. 201, s. 7, v. 12, p. 598; Feb. 18, 1875, v. 18, p. 318.
82 Art. War.

ART. 82. Every officer commanding a garrison, fort, or other place, where the troops consist of different corps, shall, subject to the provisions of article eighty, be competent to appoint, for such garrison or other place, courts-martial, consisting of three officers, to try offenses not capital.[2]

Jurisdiction of field officers', regimental, and garrison courts.
July 17, 1862, c. 201, s. 7, v. 12, p. 598.
March 2, 1901, v. 31, p. 951.
83 Art. War.

ART. 83. Regimental and garrison courts-martial and summary courts detailed under existing laws to try enlisted men shall not have power to try capital cases or commissioned officers, but shall have power to award punishment not to exceed confinement at hard labor for three months or forfeiture of three months' pay, or both, and in addition thereto, in the case of noncommissioned officers, reduction to the ranks, and in the case of first-class privates reduction to second-class privates: *Provided*, That a summary court shall not adjudge confinement and forfeiture in excess of a period of one month, unless the accused shall before trial consent in writing to trial by said court, but in any case of refusal to so consent the trial may be had either by general, regimental, or garrison court-martial, or by said summary court, but in case of trial by said summary court without consent as aforesaid, the court shall not adjudge confinement or forfeiture of pay for more than one month.[3] *Act of March 2, 1901* (*31 Stat. L., 951*).

Oath of members of courts-martial.
July 27, 1892, v. 27, p. 278.
84 Art. War.

ART. 84. The judge-advocate shall administer to each member of the court, before they proceed upon any trial, the following oath, which shall also be taken by all members of regimental and garrison courts-martial: "*You, A B, do swear that you will well and duly try and determine, according to evidence, the matter now before you, between the United States of America and the prisoner to be tried, and that you will duly administer justice, without partiality, favor, or affection, according to the provisions of the rules and articles for the government of the armies of the United States, and if any doubt should arise, not explained by said articles, then according to your conscience, the best of your understanding, and the custom of*

---

[1] See the title "*Regimental courts-martial,*" in the chapter entitled MILITARY TRIBUNALS. The eightieth article was repealed by the act of March 2, 1901 (31 Stat. L., 951).

[2] See the title "*The summary court,*" in the chapter entitled MILITARY TRIBUNALS.

[3] See also, as to the power of the summary court to punish, the act of June 18, 1898 (30 Stat. L. 483), article 80, *ante*.

war in like cases; and you do further swear that you will not divulge[1] *the sentence of the court until it shall be published by the proper authority, except to the judge-advocate; neither will you disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof, as a witness, by a court of justice,*[2] *in a due course of law. So help you God."*[3] *Act of July 27, 1892 (27 Stat. L., 278).*

---

[1] The only case which has been met with in which the members of a court-martial have been required to disclose their votes by the process of a civil court is that of In re Mackenzie, 1 Pa. Law J. R., 356, in which the members of a naval court-martial were compelled, against their objections, to state their votes as given upon the findings at a particular trial.

[2] In the present corresponding British article the words "or a court-martial" are added after the words "a court of justice."

[3] This article makes the administering to the court of the form of oath thereby prescribed an essential preliminary to its entering upon a trial (*a*). Until the oath is taken as specified, the court is not qualified "to try and determine." The arraignment of a prisoner and reception of his plea—which is the commencement of the trial—before the court is sworn is without legal effect. The article requires that the oath shall be taken not by the court as a whole, but by "each member." Where, therefore, all the members are sworn at the same time, the judge-advocate will preferably address each member by name, thus: "You, A B, C D, E F, etc., do swear," etc. A member added to the court, after the members originally detailed have been duly sworn, should be separately sworn by the judge-advocate in the full form prescribed by the article; otherwise he is not qualified to act as a member of the court. A member who prefers it may be affirmed instead of sworn. See section 1, Revised Statutes. Dig. Opin. J. A. G., par. 225.

The members are sworn to try and determine the matter before them at the time of the administering of the oath. In a case, therefore, where, after the court had been sworn and the accused had been arraigned and had pleaded, an additional charge, setting forth a new and distinct offense, was introduced into the case, and the accused was tried and convicted upon the same, *held* that as to this charge the proceedings were fatally defective, the court not having been sworn to try and determine such charge (*b*). Ibid., par. 226.

It is a departure from the engagement expressed in the body of the oath—to try and determine according to evidence, and administer justice according to the Articles of War, etc.—for a court-martial to determine a case either upon personal knowledge of the facts possessed by the members and not put in evidence, or according to the private views of justice of the members independently of the provisions of the code (*c*). Ibid., 97, par. 3.

Where the vote of each member of the court upon one of several specifications upon which the accused was tried was stated in the record of trial, *held* that such statement was a clear violation of the oath of the court, though it did not affect the validity of the proceedings or sentence. A statement in the record of trial to the effect that all the members concurred in the finding or in the sentence, while it does not vitiate the proceedings or sentence, is a direct violation of the oath prescribed by this article. See sixty-second article. Ibid., par. 227.

The disclosing of the finding and sentence to a clerk by permitting him to remain with the court at the final deliberation and enter the judgment in the record is a violation of the oath and a grave irregularity, though one which does not affect the validity of the proceedings or sentence. Ibid., par. 229.

The words "a court of justice" are deemed to mean a civil or criminal court of the United States, or of a State, etc., and not to include a court-martial. A case can hardly be supposed in which it would become proper or desirable for a court-martial to inquire into the votes or opinions given in closed court by the members of another similar tribunal. Ibid., 98, par. 6.

---

[a] See, in this connection, G. O. 15, H. A., 1880, which, in directing that judge-advocates shall be detailed for regimental and garrison, as well as general, courts-martial, rescinds G. O. 49 of 1871, prescribing a special form of oath for the former courts, and thus provides for their taking the due and regular oath recited in article 84.

[b] See G. C. M. O. 39, War Department, 1867; G. O. 13, Northern Department, 1864.

[c] Compare G. O. 21, Department of the Ohio, 1866; G. C. M. O. 41, Department of Texas, 1874.

Oath of judge advocate.
85 Art. War.

ART. 85. When the oath has been administered to the members of a court-martial, the president of the court shall administer to the judge-advocate, or person officiating as such, an oath in the following form:

"*You, A B, do swear that you will not disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof, as a witness, by a court of justice, in due course of law; nor divulge the sentence of the court to any but the proper authority until it shall be duly disclosed by the same. So help you God.*"

Contempts of court.
86 Art. War.

ART. 86. A court-martial may punish, at discretion, any person who uses any menacing words, signs, or gestures, in its presence, or who disturbs its proceedings by any riot or disorder.[1]

Behavior of members.
87 Art. War.

ART. 87. All members of a court-martial are to behave with decency and calmness.

Challenges by prisoner.
88 Art. War.

ART. 88. Members of a court-martial may be challenged by a prisoner, but only for cause stated to the court. The court shall determine the relevancy and validity thereof,

---

[1] Contempts, broadly considered, are of two kinds—direct and constructive. Contempts committed in the presence of the court, sitting judicially, or so near as to interfere with the orderly course of procedure, are direct contempts. Contempts committed, not in presence of the court, but which tend, by their operation, to interrupt, obstruct, embarrass, or prevent the due and orderly administration of justice, are constructive contempts. Indianapolis Water Co. *v.* The American Strawboard Co., 75 Fed. Rep., 972. Over the former, direct contempts courts-martial are endowed with jurisdiction by the terms of the eighty-sixth Article of War; in respect to the latter, constructive contempts, when committed by persons not subject to military jurisdiction, courts-martial are without jurisdiction.

The power of a court-martial to punish, under this article, being confined practically to acts done in its immediate presence,(*a*) such a court can have no authority to punish as for a contempt a neglect by an officer or soldier to attend as a witness in compliance with a summons.(*b*) Dig. Opin. J. A. G., par. 230.

A court-martial has none of the common-law power to punish for contempt vested in the ordinary courts of justice, but only such authority as is given it by this article. Thus, *held* that a court-martial would not be authorized to punish as for a contempt, under this article (or otherwise), a civilian witness duly summoned and appearing before it, but, when put on the stand, declining (without disorder) to testify. Ibid., par. 231. See also XVIII Opin. Atty. Gen., 278.

Where a contempt within the description of this article has been committed, and the court deems it proper that the offender shall be punished, the proper course is to suspend the regular business, and, after giving the party an opportunity to be heard, explain, etc.,(*c*) to proceed, if the explanation is insufficient, to impose a punishment, resuming thereupon the original proceedings. The action taken is properly summary, a formal trial not being called for. Close confinement in quarters or in the guardhouse during the trial of the pending case, or forfeiture of a reasonable amount of pay, has been the more usual punishment. Instead of proceeding against a military person for a contempt in the mode contemplated by this article, the alternative course may be pursued of bringing him to trial before a new court on a charge for a disorder under article 62.(*d*) Ibid., par. 233.

---

[a] It was held by the Secretary of War in the case of Lieutenant-Colonel Backenstos (G. O. 14, War Department, 1850) that a court-martial had, under this article, no power to punish its own members.

[b] As to the power of courts of inquiry to punish for contempt, see one hundred and fifteenth article and note.

[c] See G. C. M. O. 37, Fourth Military District, 1868.

[d] Compare Samuel, 634; Simmons, sec. 434. The latter course has not infrequently been adopted in our practice.

and shall not receive a challenge to more than one member at a time.[1]

---

[1] This article authorizes the exercise of the right of challenge before all courts except field officers' courts and summary courts. These courts are not subject to be challenged, because, being composed of but one member, there is no authority provided which is competent to pass upon the validity of the challenge. Ibid., par. 234.

It is ordinarily a sufficient ground of challenge to a member that he is the author of the charges and is a material witness in the case. The mere fact that he is to be a witness is not, in general, to be held sufficient. Ibid., par. 235

The mere fact that a member signed or formally preferred the charges is not sufficient ground of objection, since he may have done so ministerially or by the order of a superior. But where a member, upon investigation or otherwise, has initiated or preferred the charges as accuser, or as prosecutor has caused them to be brought to trial, he is properly subject to challenge. Thus, that a member had originated and preferred the charge for a disobedience of his own order was held good cause of challenge. So in a case of a trial for an assault upon an officer, the fact that the officer upon whom the assault was committed, and who was the prosecuting witness, was a member of the court was held to constitute complete cause of challenge to him as member. Ibid., par. 236.

That a member is the regimental or company commander of the accused does not per se constitute sufficient ground of challenge. But such ground may exist where the commander has preferred the charges or where the relations between him and the accused have been such as to give rise to a presumption of prejudice. Ibid., par. 237.

Where a member, before the trial, has expressed an opinion, based upon a knowledge of the facts, that the accused would be convicted whichever way he might plead, *held* that he had clearly prejudged the case and that the court should have sustained an objection taken to him by the accused, although upon being challenged he declared that he was without predjudice. (*a*) Ibid., par. 238. In re Bird, 2 Sawyer, 33.

A member, on being challenged for prejudice, declared that he did not consider the accused (an officer) a gentleman, and would not associate with him, and that he had stated so; but he added at the same time that he was not prejudiced for or against him. *Held*, especially as one of the charges was "conduct unbecoming an officer and a gentleman," that the challenge was improperly overruled by the court. Dig. Opin. J. A. G , par. 239.

It is not good ground of challenge to a member that he is junior in rank to the accused, nor is it sufficient ground that the member will gain a step or "file" in the line of promotion if the accused is dismissed. It is, however, a sufficient cause of challenge to a member that if the accused (an officer) be convicted and sentenced to be dismissed, the member will be forthwith entitled to promotion. Ibid., par. 240.

Held sufficient ground of challenge to a member of a court-martial that he had previously taken part in an investigation of the same case before a court of inquiry, though such court did not express a formal opinion. Ibid., par. 241.

Held good ground of challenge to a member of a court-martial in a case of alleged theft by a soldier that such member had been a member of a previous court of inquiry which had investigated the case and fixed the misappropriation of the property upon the accused. Ibid., par. 242.

Held that the members of a court-martial who had composed a previous court by which the same accused had been tried for the same act, though under a different charge, were all subject to be set aside on challenge. Ibid., par. 243.

It is not necessary (though usual and proper) for a member to withdraw from the court room on being challenged and pending the deliberation on the objection. Ibid., par. 244.

Courts should be liberal in passing upon challenges, but should not entertain an objection which is not specific, or allow one upon its mere assertion by the accused, without proof and in the absence of any admission on the part of the member. (*b*) A positive declaration by the challenged member to the effect that he has no preju-

---

a See this opinion as adopted by the President in G. C. M. O. 66, Headquarters of Army, 1879.

b See G. C. M. O. 66, War Department, 1875. The challenge, the allowance of which by the court in General Twiggs's case was disapproved in G. O. 4, War Department, 1858, was simply a general objection to the member by the accused on account of "some unpleasant circumstances growing out of their official relations," no specific allegation of bias being made and the member himself expressly disclaiming any feeling of prejudice.

dice or interest in the case will, in general, in the absence of material evidence in support of the objection, justify the court in overruling it. Ibid., par. 245.

Where, before arraignment, the accused (an officer), without having personal knowledge of the existence of ground of challenge to a member, had credible hearsay information of its existence, *held* that he should properly have raised the objection before the members were sworn, and that the court was not in error in refusing to allow him to take it at a subsequent stage of the trial. Ibid., par. 246.

The fact that a sufficient cause of challenge exists against a member, but through ignorance of his rights, is not taken advantage of by the accused, or if asserted is improperly overruled by the court, can affect in no manner the validity in law of the proceedings or sentence, though it may sometimes properly furnish occasion for a disapproval of the proceedings, etc., or a remission in whole or in part of the sentence. (*a*) Ibid., par. 247.

At the trial of an officer in 1853, the accused challenged a member of the court "for bias, prejudice, and malice." The challenged member thereupon stated "that he had no prejudice or bias against the accused which could in the remotest degree interfere with his doing justice in the case," but, "being challenged, he requested to be relieved from sitting on the court," which the court refused, and overruled the challenge. The accused then requested that the member might be put on his *voir dire* in order that he might examine him as to the extent of any prejudice he might entertain, which application the court also refused. This refusal of the right of an accused person to place a challenged member on his *voir dire*, in order to ascertain whether the grounds of challenge advanced by him were or were not sufficient, was disapproved by the Secretary of War upon the ground that "an accused is now allowed in all cases, for the better security of an impartial trial, to show the mind of the juror by examining him before the court, and the only exception is where the cause of the challenge goes to the disgrace or discredit of the juror." G. O. No. 21, War Dept., of 1853.

The article imposes no limitation upon the exercise of the right of challenge other than that "more than one member shall not be challenged at a time." Thus while the panel, or the court as a whole, is not subject to challenge, yet all the members may be challenged provided they are challenged separately. The article contains no authority for challenging the judge-advocate. Dig. Opin. J. A. G., par. 248.

In the case of an enlisted man tried in 1875, the judge-advocateof the court was the principal witness against the prisoner and was directly interested in his conviction. In this case it was remarked by the reviewing officer (the Secretary of War) that "it was not contemplated that a prisoner would be brought to trial before this court on charges which raised the question whether its judge-advocate had not himself been guilty of official misconduct. But such was the fact in this case. The judge-advocate had a personal interest in the conviction of the prisoner and was also the principal witness against him." Under such circumstances the officer should have applied to the proper authority to be relieved from duty as judge-advocate. The proceedings were disapproved. G. C. M. O. No. 41, War Dept., 1875; see also G. C. M.O. 66, 1875.

The court of itself can not excuse a member in the absence of a challenge. A member not challenged but considering himself disqualified can be relieved only by application to the convening authority. Dig. Opin. J. A. G., par 249.

An accused challenged the entire court on the ground that the convening officer was "accuser." *Held* properly overruled; the array can not be challenged at military law. The article declares that "the court * * * shall not receive a challenge to more than one member at a time." Ibid., par. 250.

A court-martial can not relieve or "excuse" a member except upon a challenge duly interposed and sustained under this article. The fact that a member has been absent from the court for several days and has not heard the testimony meanwhile taken constitutes no legal ground for excusing him by the court. Ibid., par. 251.

An accused objected to a member on the ground that some time before he had had a disagreement with the member and thought that he "might be prejudiced." The member declared that he was conscious of no prejudice whatever, but that, on the

---

[a] See opinion of the Attorney-General of January 19, 1878 (XV Opins., 432), in which the opinion, expressed by the Judge-Advocate-General in the most recent of the cases upon which this paragraph is based—that the fact that one of the charges upon which the accused was convicted was preferred by a member of the court who also testified as a witness on the trial (but who, though clearly subject to objection, was not challenged by the accused) could not affect the validity of the sentence of dismissal after the same had been duly confirmed—is concurred in by the Attorney-General. And to a similar effect see Keyes *v.* U. S., 15 Ct. Cls., 532.

In G. C. M. O. 88, Department of Dakota, 1878, the point is noticed that where a challenge interposed by the accused has been improperly disallowed a subsequent plea of guilty is not to be treated as a waiver of the advantage to which he may be entitled by reason of the improper ruling.

Prisoner standing mute.
89 Art. War.

ART. 89. When a prisoner, arraigned before a general court-martial, from obstinacy and deliberate design, stands mute, or answers foreign to the purpose, the court may proceed to trial and judgment as if the prisoner had pleaded not guilty.

Judge-advocate prosecutor and counsel for prisoner.
90 Art. War.

ART. 90. The judge-advocate, or some person deputed by him, or by the general or officer commanding the Army, detachment, or garrison, shall prosecute in the name of the United States, but when the prisoner has made his plea, he shall so far consider himself counsel for the prisoner as to object to any leading question to any of the witnesses, and to any question to the prisoner the answer to which might tend to criminate himself.

Judge-advocate to withdraw from closed sessions.
Sec. 2, July 27, 1892, v. 27, p. 278.

Whenever a court-martial shall sit in closed session the judge-advocate shall withdraw, and when his legal advice or his assistance in referring to recorded evidence is required it shall be obtained in open court. *Section 2, act of July 27, 1892 (27 Stat. L., 278).*

Administration of oaths.
Sec. 4, July 27, 1892, v. 27, p. 278.

That judge-advocates of departments and of courts-martial, and the trial officers of summary courts, are hereby authorized to administer oaths for the purposes of the administration of military justice, and for other purposes of military administration. *Section 4, act of July 27, 1892 (27 Stat. L., 278).*

Depositions.
Mar. 3, 1863, c. 75, s. 27, v. 12, p. 736.
91 Art. War.

ART. 91. The depositions of witnesses residing beyond the limits of the State, Territory, or district in which any military court may be ordered to sit, if taken on reasonable notice to the opposite party and duly authenticated, may be read in evidence before such court in cases not capital.[1]

---

contrary, his feelings toward the accused were friendly. *Held* that the court erred in sustaining the challenge. Ibid., par. 252.

The accused were Indian scouts, charged with mutiny. Some of the members of the court, though disclaiming any prejudice against the accused personally, were aware that they were present at the outbreak, and were fully apprised, from their own personal presence or knowledge of the circumstances, that the mutiny, which had involved homicide, constituted a most aggravated offense of the class. *Held* that as these members could scarcely avoid applying their impressions to the accused when shown to be connected with the disorder, they would fairly have been subject to objection as triers. Ibid., par. 253.

A mere general opinion in regard to the impropriety of acts such as those charged against the accused, unaccompanied by any opinion as to his guilt or innocence on the charges, is not a sufficient ground of objection under this article. Ibid., par. 254.

[1] A deposition can not be read in evidence in a capital case as in a case of a violation of article 21, or a case of a spy, or one of desertion in time of war; otherwise in a case of desertion in time of peace. Nor is the deposition admissible of a witness who resides in the State, etc., within which the court is held, except by consent. Dig. Opin. J. A. G., par. 256.

In a case tried in 1875 the court refused to allow the accused time to confer with his counsel for the purpose of preparing cross-interrogatories to be propounded to witnesses whose depositions were to be taken at the instance of the prosecution. As the defense was not prejudiced by the error of the court, the findings were approved. The most ample opportunity should always be afforded the party on trial for such purpose. G. C. M. O. No. 26, War Dept., 1875.

Oath of witness. 92 Art. War.

ART. 92. All persons who give evidence before a court-martial shall be examined on oath, or affirmation, in the following form: "*You swear* (*or affirm*) *that the evidence you shall give, in the case now in hearing, shall be the truth, the whole truth, and nothing but the truth. So help you God.*"[1]

Continuances. 93 Art. War.

ART. 93. A court-martial shall, for reasonable cause, grant a continuance to either party, for such time, and as often, as may appear to be just: *Provided*, That if the prisoner be in close confinement, the trial shall not be delayed for a period longer than sixty days.[2]

Order of voting. 95 Art. War.

ART. 95. Members of a court-martial, in giving their votes, shall begin with the youngest in commission.

Sentence of death. 96 Art. War.

ART. 96. No person shall be sentenced to suffer death except by the concurrence of two-thirds of the members of a general court-martial, and in the cases herein expressly mentioned.[3]

---

[1] This article prescribes a single specific form of oath to be taken by all witnesses. The Constitution, however (article 1 of amendment), has provided that Congress shall make no law prohibiting the free exercise of religion. Where, therefore, the prescribed form is not in accordance with the religious tenets of a witness, he should be permitted to be sworn according to the ceremonies of his own faith or as he may deem binding on his conscience.(*a*) Dig. Opin. J. A. G., par. 274, note 2.

The article does not prescribe by whom the oath shall be administered. By the custom of the service it is administered by the judge-advocate. (And see now the provision of the act of July 27, 1892, sec. 4.) When the judge-advocate himself takes the witness stand, he is properly sworn by the president of the court. Ibid., par. 274.

A witness who has once been sworn and has testified is not required to be resworn on being subsequently recalled to the stand by either party. The reswearing, however, of such a witness will not affect the legal validity of the proceedings or sentence. Ibid., par. 274, note 2.

[2] In making an application for a continuance or postponement under this article, on account of the absence of a witness, the form of affidavit prescribed in paragraph 887 of the Army Regulations should in general be substantially observed. But while the court may refuse the application if this regulation be not followed, it may, in its discretion, refrain from insisting that the same be strictly complied with, and accept a modified form.(*b*) It should, however, in all cases require that the desired evidence appear or be shown to be material, and not merely cumulative,(*c*) and that to await its production will not delay the trial for an unreasonable period. It should also, in general, before granting the continuance, be assured that the absence of the witness is not owing to any neglect on the part of the applicant. This feature, however, will not be so much insisted upon in military as in civil cases.(*d*) Ibid., 108, par. 1. See, also, the title "Continuances" in the chapter entitled MILITARY TRIBUNALS.

Article 94 was repealed by the act of March 2, 1901 (31 Stat. L., 951).

[3] Though it has sometimes been viewed otherwise, it is deemed quite clear upon the terms of the present article that it is not necessary to the legality of a death sentence that two-thirds of the court should have concurred in the finding as well as the sentence.(*e*) Further, in the absence of any requirement to that effect in the

---

[a] See 1 Greenl. Ev., sec. 371; O'Brien, 260.

[b] It is not the practice of courts-martial to admit counter affidavits from the opposite party as to what the absent witness would testify. And as to the civil practice, see Williams *v.* State, 6 Nebraska, 334.

[c] Compare People *v.* Thompson, 4 Cal., 238; Parker *v.* State, 55 Miss., 414.

[d] A military accused can not be charged with laches in not procuring the attendance at his trial of a witness who is prevented from being present by superior military authority. Thus in a case in G. O. 63, Department of Dakota, 1872, an accused soldier was held entitled to a continuance till the return of material witnesses then absent on an Indian expedition.

[e] Compare McNaghten, 120.

Penitentiaries. July 16, 1862, c. 190, ss. 1, 4, v. 12, p. 589. 97 Art. War.

ART. 97. No person in the military service shall, under the sentence of a court-martial, be punished by confinement in a penitentiary, unless the offense of which he may be convicted would, by some statute of the United States, or by some statute of the State, Territory, or District in which such offense may be committed, or by the common law, as the same exists in such State, Territory, or District, subject such convict to such punishment.[1]

---

article, it is not deemed essential to the validity of the sentence that the record should state the fact that two-thirds of the court concurred therein. The practice, however, has been to add such a statement.(*a*) Ibid., 112, par. 1.

A sentence of death imposed by a court-martial, upon a conviction of several distinct offenses, will be authorized and legal if any one of such offenses is made capitally punishable by the Articles of War, although the other offenses may not be so punishable. Ibid., par. 285.

A court-martial, in imposing a death sentence, should not designate a time or place for its execution, such a designation not being within its province, but pertaining to that of the reviewing authority. If it does so designate, this part of the sentence may be disregarded and a different time or place fixed by the commanding general. Ibid., par. 286.

Where a death sentence imposed by a court-martial has been directed by the proper authority to be executed on a particular day, and this day, owing to some exigency of the service, has gone by without the sentence being executed, it is competent for the same authority, or his proper superior, to name another day for the purpose, the time of its execution being an immaterial element of this punishment.(*b*) Ibid., par. 288.

[1] This article, by necessary implication, probibits the imposition of confinement in a penitentiary as a punishment for offenses of a purely or exclusively military character—such as desertion, for example.(*c*) Ibid., par. 288.

A sentence of penitentiary confinement in a case of a purely military offense is wholly unauthorized and should be disapproved. Effect can not be given to such a sentence by commuting it to confinement in a military prison or to some other punishment which would be legal for such offense. Nor in a case of such an offense can a severer penalty, as death, be commuted to confinement in a penitentiary. Ibid., par. 289.

Nor can penitentiary confinement be legalized as a punishment for purely military offenses by designating a penitentiary as a "military prison" and ordering the confinement there of soldiers sentenced to imprisonment on conviction of such offenses. Ibid., par. 290.

An offense charged as "conduct to the prejudice of good order and military discipline," which, however, is in fact a larceny, (*d*) embezzlement, violent crime, or other offense made punishable with penitentiary confinement by the law of the State, etc., may legally be visited with this punishment. Ibid., par. 291.

The term "penitentiary" as employed in this article has reference to civil prisons only, as the penitentiary of the United States or District of Columbia at Washington,

---

[a] In the case of an enlisted man, tried by a general court-martial for a violation of the twenty-first Article of War, the record failed to show affirmatively that two-thirds of the members concurred in the imposition of the death sentence; the sentence was therefore disapproved by the President. G. O. 172, A. G. O., 1862. See, also, G. O. 18, A. G. O., 1863.

[b] It was held by the Supreme Court in Coleman *v.* Tennessee (7 Otto, 519, 520) that a soldier who had been convicted of murder and sentenced to death by a general court-martial in May, 1865, but the execution of whose sentence had been meanwhile deferred, by reason of his escape and the pendency of civil proceedings in his case, might at the date of the ruling (October term, 1878) "be delivered up to the military authorities of the United States, to be dealt with as required by law."

More recently (May, 1879; XVI Opins., 349) it has been held in this case by the Attorney-General that the death sentence might legally be executed notwithstanding the fact that the soldier had meanwhile been discharged from the service, such discharge, while formally separating the party from the Army, being viewed as not affecting his legal status as a military convict. But, in view of all the circumstances of the case, it was recommended that the sentence be commuted to imprisonment for life or a term of years.

[c] See G. O. 4, War Department, 1867; also the action taken in cases in the following general orders: G. O. 21, Department of the Platte, 1866; G. O. 21, ibid., 1871; G. O. 44, Eighth Army Corps, 1862; G. C. M. O. 34, 35, 43, 46, 72, 73, Department of the Missouri, 1870.

[d] In a case of larceny the court should inform itself as to whether the value of the property stolen be not too small to permit a penitentiary confinement for the offense under the local law. See G. O. 44, Eighth Army Corps, 1862; G. C. M. O. 63, Department of the Platte, 1872.

ART. 98. No person in the military service shall be punished by flogging, or by branding, marking, or tattooing on the body.

Flogging. Aug. 5, 1861, c. 54, s. 3, v. 12, p. 317; June 6, 1872, c. 316, s. 2, v. 17, p. 261. **98 Art. War.**

the public prisons or penitentiaries of the different States, and the "penitentiaries erected by the United States" (see section 1892, Revised Statutes) in most of the Territories. The military prison at Leavenworth is not a penitentiary in the sense of the article. The term "State (or State's) prison" in a sentence is equivalent to penitentiary. Ibid., par. 292.

A military prisoner duly sentenced or committed to a penitentiary becomes subject to the government and rules of the institution. Ibid., par. 293.

Where a soldier is sentenced to be confined in a penitentiary, the proper reviewing authority may legally designate for the execution of the punishment any State or Territorial penitentiary within his command. Where there is no such penitentiary available for the purpose, or desirable to be resorted to, he will properly submit the case to the Secretary of War for the designation of a proper penitentiary. Ibid., 114, par. 7

A court-martial, in imposing by its sentence the punishment of confinement in a penitentiary, is not required to follow the statute of the United States or of the State, etc., as to the term of the confinement. It may adjudge, at its discretion, a less or a greater term than that affixed by such statute to the particular offense. At the same time the court will often do well to consult the statute, as indicating a reasonable measure of punishment for the offense. Ibid., par. 294.

Where a court-martial specifically sentences an accused to confinement in a "military prison," he can not legally be committed to a penitentiary, although such form of imprisonment would be authorized by the character of his offense. But where a sentence of confinement is expressed in general terms, as where it directs that the accused shall be confined "in such place or prison as the proper authority may order," or in terms to such effect, *held* that the same may, under this article, legally be executed by the commitment of the party to a penitentiary, to be designated by the reviewing officer or Secretary of War, provided, of course, the offense is of such a nature as to warrant this form of punishment. Ibid., par. 295.

Held that penitentiary confinement could not legally be adjudged upon a conviction of a violation of the twenty-first article, alleged in the specification to have consisted in the lifting up of a weapon (a pistol) against a commanding officer and discharging it at him with intent to kill. By charging the offense under this article the Government elected to treat it as a purely military offense, subject only to a military punishment. So, upon a conviction of joining in a mutiny, in violation of article 22, *held* that a sentence of confinement in a penitentiary would not be legal although the mutiny involved a homicide, set forth in the specification as an incidental aggravating circumstance. To have warranted such a punishment in either of these cases the Government should have treated the act as a "crime," and charged and brought it to trial as such under article 62. Ibid., par. 296.

Where the act is charged as a crime under article 62, and charge and specification taken together show an offense punishable with confinement in a penitentiary by the law of the locus of the crime, the sentence may legally adjudge such a punishment. So *held* in a case where charge and specification together made out an allegation of perjury under section 5392, Revised Statutes. Ibid., par. 297.

"Obtaining money under false pretenses" is punishable by confinement in a penitentiary by the laws of Arizona. A sentence of court-martial imposing this punishment, on conviction of an offense of this description committed in this Territory, charged as a crime under article 62, *held* authorized by article 97. Ibid., par. 298.

A conviction of a larceny of property of such slight value as not to authorize this punishment under the local law would not warrant a sentence of confinement in a penitentiary. In a case of larceny the court should inform itself as to whether the value of the property stolen be not too small to permit of penitentiary confinement for the offense under the law of the State, etc. (*a*) Ibid., 115, par. 13.

A punishment of confinement in a penitentiary, where legal, may be mitigated to confinement in a military prison or at a military post. Ibid., par. 299.

A discharged soldier, serving a sentence of confinement in a State or Territorial penitentiary, still remains under military control, at least so far as that his sentence may, by competent military authority, or by the President, be remitted, or may be mitigated—as, for example, to confinement in a military prison or at a military post. Ibid., par. 300.

---

[a] See G. O. 44, Eighth Army Corps, 1862; G. C. M. O. 63, Department of the Platte, 1872.

Discharge and dismissal of officers.
99 Art. War.
July 13, 1866, c. 176, s. 5, v. 14, p. 92.

ART. 99. No officer shall be discharged or dismissed from the service, except by order of the President, or by sentence of a general court-martial; and in time of peace no officer shall be dismissed, except in pursuance of the sentence of a court-martial, or in mitigation thereof.[1]

---

[1] Dismissal by Executive order is quite distinct from dismissal by sentence. The latter is a *punishment;* the former is *removal from office.* (*a*) The power to dismiss, which, as being an incident to the power to *appoint* public officers, had been regarded since 1789 as vested in the President by the Constitution, (*b*) was for the first time in 1866 (by the act of July 13 of that year, reenacted in the second clause of the present ninety-ninth article of war and in section 1229, Revised Statutes), expressly divested by Congress in so far as respects its exercise in time of peace. (*c*) By the statute law it is now authorized only in time of war. During the late war it was exercised in a great number of cases, sometimes for the purpose of summarily ridding the service of unworthy officers, sometimes in the form of a discharge or muster-out of officers whose services were no longer required. The distinction between this species of dismissal and dismissal by sentence is illustrated by the fact that the former has, with the sanction of legal authority, been repeatedly ordered in cases where a court-martial has previously *acquitted* the officer of the very offenses on account of which the summary action has been resorted to. (*d*) Dig. Opin. J. A. G., par. 1203.

The Executive, in summarily dismissing an officer, can not at the same time deprive him of pay due. Nor can the right of an officer to his pay, for any period prior to a summary dismissal ordered in his case, be divested by dating back of the order of dismissal. Such an order can not be made to relate back so as to affect the status or rights of the officer as they existed before the date of the taking effect of the dismissal. Ibid., par. 1213.

A summary dismissal "by order of the Secretary of War" is in law the act of the President. (*e*) Ibid., par. 1205.

A department or army commander can have, of course, no authority to summarily dismiss or discharge an officer from the military service. But where, in a case of a regular officer, this authority was in fact exercised, and the President, treating his office as vacant, proceeded to fill the vacancy by a new appointment, *held* that he had made the dismissal his own act and legalized the same. (*f*) So where (in 1863) an officer of volunteers was dismissed by the order of an army commander, which was never ratified in terms by the President, but a successor, appointed to the vacancy by the governor of the State, was accepted and mustered in by the United States, *held* (in 1880) that the dismissal was to be regarded as having been substantially ratified and legalized. So an unauthorized dismissal, by order of a regular officer, may be in effect made operative by a subsequent appointment and confirmation of a successor, as in Blake's case. Ibid., par. 1206.

A summary dismissal of an officer does not properly take effect until the order of dismissal or an official copy of the same is delivered to him, or he is otherwise officially notified of the *fact* of the dismissal. Ibid., par. 1204.

Held that it could not affect the operation of an order summarily dismissing an officer as "second lieutenant" that, before its being communicated to him by being promulgated to the regiment, he had become by promotion a first lieutenant. Ibid., par. 1211.

A dismissal of an officer by Executive order does not operate to disqualify him for reappointment to military office, or for appointment to civil office under the United States. Ibid., par. 1212.

There can be no *revocation* of a duly executed order of dismissal, however unmerited or injudicious the original act may be deemed to have been. For, distinct as dismissal by order is, in its *nature,* from dismissal by sentence (see section 1, ante), the *effect* of the proceeding in divesting the office is the same in each case. An officer dismissed by an order, though his dismissal may have involved no disgrace, is assimilated to an officer dismissed by sentence in so far that he is completely relegated

---

[a] See VII Opins. Att. Gen., 251.

[b] See, as among the principal authorities on this subject, Commonwealth *v.* Bussier, 5 Sergt. & Rawle, 461; *Ex parte* Hennen, 13 Peters, 258, 259; United States *v.* Guthrie, 17 Howard, 307; IV Opins. Att. Gen., 1, 609–613; VI id., 5–6; VII id., 251; VIII id., 230–232; XII id., 424–426; Sergeant, Const. Law., 373; 2 Story's Coms., sec. 1537, note; 1 Kent's Coms., 310; 2 Marshall's Washington, 162.

[c] See XVI Opins. Att. Gen., 315.

[d] See XII Opins. Att. Gen., 427.

[e] See XII Opins. Att. Gen., 421; McElrath *v.* United States, 12 Ct. Cls. 202.

[f] See opinion of Att. Gen. (XVI Opins., 298), noted under article 106.

ART. 100. When an officer is dismissed from the service for cowardice or fraud the sentence shall further direct that the crime, punishment, name, and place of abode of the delinquent shall be published in the newspapers in and about the camp, and in the State from which the offender came or where he usually resides; and after such publication it shall be scandalous for an officer to associate with him.[1]

Publication of officers cashiered for cowardice or fraud.
100 Art. War.

---

to a civil status, having in law no nearer or other relation to the military service than has any civilian who has never been in the Army. Thus an order assuming to revoke a legal order of dismissal is as unauthorized as it is ineffectual. The original dismissal is an act done which can not be undone, and the order, which is the evidence of it, is therefore incapable of revocation or recall.(*a*) Nor can that be effected indirectly which can not legally be done directly. An officer dismissed by Executive order can not be relieved by being allowed to resign or be retired, or by being granted an honorable discharge. For, in order to be discharged, etc., from the Army, he must first be *in* the Army, and there is but one mode by which an officer once legally separated from the Army can be put into it, viz, by a new appointment according to the Constitution.(*b*) Ibid., par. 1214.

That a summary dismissal is not revocable by an Executive order is established law. Where an officer duly summarily dismissed in July, 1863, and subsequently restored by an order assuming to revoke the order of dismissal, procured to be passed by Congress in 1890 an act recognizing his restoration as legal, which, however, was vetoed by the President, *held* that his status was that of a person who had been illegally in the military service since the date of the order of so-called revocation. Ibid., par. 1215.

Where, by the direction of the President, an order was issued canceling the muster-in of a volunteer officer on account of facts indicating that he was not a fit person to hold a commission, *held* that this was a legal exercise of the authority of summary dismissal for cause vested in the President by the act of July 17, 1862. Ibid., par. 1210.

The President had not the same power of dismissal in the case of a *volunteer* officer as he has in that of a regular officer. This for the reason that the tenure of office of the former is for a fixed term and for a limited time only; the power to dismiss is thus, in his case, not an incident of the appointing power.(*c*) But the President was invested with a special power of dismissal of volunteer officers by the act of Congress of July 17, 1862. Ibid., par. 1210.

Held that the ruling in Blake's case (103 U. S. 231) was applicable, and that the office of an army officer might legally be vacated by the appointment and commission of a successor, although between the office of the original officer and that of the successor there may have intervened a tenure by a third officer. Ibid., par. 1207.

Thus (1) Captain A was dismissed from his office without legal authority; (2) Captain B, an unassigned officer, was assigned to the captaincy of A, and held it till his own resignation, one year and three months later; (3) Lieutenant C was then promoted and appointed to the office and his appointment was confirmed. *Held* that Lieutenant C was the legal incumbent of the office. Ibid., par. 1207.

Held that the ruling of the Supreme Court in the case of Blake was not applicable to volunteer officers of State organizations, and that a governor of a State, who had duly appointed a certain volunteer officer in a regiment, was not empowered to dismiss him by simply appointing to the same office, commissioning, and causing to be mustered into the United States service another person. Ibid., par. 1208.

Held that it was quite evidently the intention of Congress in the act of July 15, 1870, section 12, that the commission held by the officers who remained unassigned on January 1, 1871, should cease on that day. No action on the part of a mustering officer was required to carry the law into effect, as is shown by G. O. 1, of January 2, 1871, in which the separation from the service on January 1 of the unassigned officers was formerly announced. Ibid., par. 1217.

[1] The terms "cowardice" and "fraud" employed in this article may be considered

---

[a] See IV Opins. Att. Gen., 124; XII id., 424–428; XIV id., 520; XV id., 658. A contrary view expressed by the Court of Claims, in its earlier period, in a series of cases (see Smith *v.* United States, 2 Ct. Cls. 206; Winters *v.* United States, 3 id., 136; Barnes *v.* United States, 4 id., 216; Montgomery *v.* United States, 5 id., 93) was finally practically abandoned in McElrath *v.* United States, 12 id., 201.

[b] See VIII Opins. Att. Gen., 235; XII id., 421; XIII id., 5; McElrath *v.* United States, 12 Ct. Cls. 202.

[c] See Mechen on Public Officers, p. 283, sec. 445.

Suspension of officer's pay.
101 Art. War.

ART. 101. When a court-martial suspends an officer from command,[1] it may also suspend his pay and emoluments for the same time, according to the nature of his offense.[2]

---

as referring mainly to the offenses made punishable by articles 42 and 60. With these, however, may be regarded as included all offenses in which fraud or cowardice is necessarily involved, though the same be not expressed in terms in the charge or specifications. Ibid., par. 301. See also In re Carter, 97 Fed. Rep., 496.

Though the injunction of the article as to the direction to be added in the sentence should of course regularly be complied with, a failure so to comply will not affect the validity of the punishment of dismissal adjudged by the sentence.(*a*) The declaration of the article that after the publication "it shall be scandalous for an officer to associate with" the dismissed officer, though it has in a few cases(*b*) been incorporated in the sentence, is not intended to be, and should not be, so expressed by the court. Ibid., par. 302.

[1] The punishment of suspension, as imposed by sentence, is usually in the form of a suspension from *rank*, or from *command*, for a stated term, sometimes accompanied by a suspension from *pay* for the same period. Suspension from rank *includes* suspension from command. Ibid., par. 2408.

A suspension from rank does not affect the right of the officer to his *office*. He retains the same as before, and, as an officer, remains subject as before to military control as well as to the jurisdiction of a court-martial for any military offense committed pending the term of suspension.(*c*) Ibid., par. 2409.

The effect of a suspension from rank (besides detaching the officer from the performance of the duties incident to his rank) is to deprive him of any right of *promotion* to a vacancy in a higher grade, occurring pending the term of suspension, and which he would have been entitled to receive by virtue of seniority had he not been suspended, such right accruing to the officer next in rank. But no such loss of promotion is incident to a mere suspension from command. Ibid., par. 2410.

Suspension from rank does not, however, deprive the officer of the right to rise in files in his grade—upon the promotion, for example, of the senior officer of such grade. The number of an officer in the list of his grade is not an incident of his rank, but of his appointment to office as conferred and dated, and, as we have seen, suspension does not affect the *office*. Moreover, loss of files is a *continuing punishment*, and if held to be involved in suspension from rank, the result would be that, for an indefinite period after the term of suspension had expired, the officer would remain under punishment, the sentence imposed by the court being thus *added to* in execution, contrary to a well-known principle of military law. Ibid., par. 2411.

It is further the effect of a suspension from rank that the officer loses for the time the minor rights and privileges of priority and precedence annexed to rank or command. Among these is the right to select quarters relatively to other officers. And where quarters are to be selected by several officers, one of whom is under sentence of suspension from rank, the suspended officer necessarily has the last choice. Or rather he has no choice, but quarters are *assigned* him by the commander; for, being still an officer of the Army, though without rank, he is entitled to *some* quarters. But *advised* that an officer sentenced to be suspended from rank could not, because of such suspension alone, be deprived of quarters previously duly selected, and occupied at the time of the suspension, such a sentence not affecting a right previously accrued and vested. Ibid., par. 2412.

Suspension from rank does not involve a status of confinement or arrest. In sentencing an officer to be suspended from rank, it is, indeed, not unusual for the court to require that he be confined during the term of suspension to his proper station, or that of his regiment, etc., i. e., that the sentence be executed there. Where this is not done, while the suspended officer is not entitled to a leave of absence, it can not affect the execution of his sentence to grant him one, and leaves of absence are not infrequently granted under such circumstances. Ibid., par. 2414.

Suspension from rank or command does not involve a loss or authorize a stoppage of pay for the period of suspension. (*d*) Pay can not be forfeited by implication. Unless, therefore, the sentence imposes a suspension from rank (or command) "*and pay*," or in terms to that effect, the suspended officer remains as much entitled to his pay as if he had not been suspended at all, and to require him to forfeit any pay would be *adding to the punishment* and illegal. Ibid., par. 2415.

[2] Where, however, the suspension is in terms extended by the sentence to *pay*, the

---

[a] Note the action taken in the case published in G. C. M. O. 27, War Department, 1872.
[b] As in cases published in G. O. (A. and I. G. O.) of May 13, 1820; G. O. 168, Department of the Missouri, 1865.
[c] See V Opins. Att. Gen., 740; VI id., 715.
[d] See IV Opins. Att. Gen., 444; VI id., 203.

ART. 102. No person shall be tried a second time for the same offense.[1]

No person tried twice for same, etc.
102 Art. of War.

---

pay is forfeited absolutely, not merely withheld. And *all* the pay is forfeited, unless otherwise expressly indicated in the sentence. The forfeiture imposed by a sentence of suspension from rank (or command) and pay for a designated term is a forfeiture of the pay of that specific term, the suspension of the rank and that of the pay being coincident. Under such a sentence the officer can not legally be deprived of pay due for a period prior to the suspension. Where an officer was sentenced to suspension from rank and pay for six months, *held* that his entire pay for those months was absolutely forfeited, notwithstanding that the pay of officers of his grade was increased by statute pending the term. Ibid., par. 2417.

A sentence of suspension from rank and pay does not affect the right of the officer to the allowances which are no part of his pay, (*a*) as the allowance for rent of quarters, as also the allowance for fuel, or rather right to purchase fuel at reduced rate. Ibid., par. 2418.

The status of an officer under suspension is the same whether such suspension has been imposed directly by sentence or by way of commutation for a more severe punishment. Thus, where a sentence of dismissal was commuted to suspension from rank or half pay for one year, *held* that the officer, while forfeiting the rights and privileges of rank and command during such term, was yet amenable to trial by court-martial for a military offense committed pending the same. Ibid., par. 2419.

Where an officer, when under a sentence of suspension, is ordered by the commander who approved the sentence, or some higher competent authority, to resume his command or the peformance of his regular military duty, such order will, in general, operate as a constructive remission of the punishment and thus terminate the suspension. (*b*) Ibid., par. 2420.

A sentence, "to be suspended from the Military Academy," in a case of a cadet, practically severs him from the military service as a cadet during the term of the suspension. It is usually added in such a sentence that at the end of such term the party is to join the next lower class. Ibid., par. 2416.

Like dismissal, suspension takes effect upon and from notice of the approval of the sentence officially communicated to the officer, either by the promulgation of the same at his station, or, where he is absent therefrom by authority, by the delivery to him of a copy of the order of approval or other form of official personal notification of the fact of the approval. Ibid., par. 2423.

Suspension, as a punishment for a *noncommissioned* officer, is not authorized in terms in article 101, nor is it contemplated in the Army Regulations. It has been adjudged in but rare cases, (*c*) and can not be regarded as sanctioned by principle or usage. Ibid., 733, par 15.

Suspension not divesting the officer of his office or commission, but simply holding in abeyance the rights and functions attached to his rank or command, he properly reverts, when the term of the punishment is completed, to his former rank and the command attached thereto, and continues to hold and exercise the same as before his arrest of trial. Ibid., 733, par 16.

Under existing usage (1892) an officer suspended by sentence from rank and command is deemed entitled to retain his quarters. But such rule may, in some cases, work a considerable inconvenience as well as prejudice to discipline, as where, for example, the suspended officer is a post commander, and continues, pending the term of his suspension, and while another officer has succeeded him as commander, to occupy the proper commanding officer's quarters. An army regulation prescribing that an officer in such a status shall not be entitled to retain or to select quarters by virtue of rank, but shall have assigned him any quarters that are available at his late station or elsewhere, *advised* as desirable to be adopted. Ibid., par 2413.

Under the ruling of the Secretary of War, as published in circular No. 3 (A. G. O.), 1888, an officer under suspension, but not required by his sentence to be "confined to the limits of his post," is not entitled to forage for his horse or horses during the term of his suspension. Ibid., par. 2424.

[1] The Constitution (Article V of the amendments) declares that "no person shall be subjected, for the same offense, to be twice put in jeopardy of life or limb." The United States courts, in treating the term "put in jeopardy" as meaning practically tried, hold that the "jeopardy" indicated "can be interpreted to mean nothing short of the acquittal or conviction of the prisoner and the judgment of the court thereon."(*d*) So, *held* that the term "tried," employed in this article, meant duly

---

a McNaghten, 27.
b See McNaghten, 22.
c See G. C. M. O. 3, Department of the East, 1872.
d U. S. *v.* Haskell, 4 Wash. C. C., 409. And see U. S. *v.* Shoemaker, 2 McLean, 114; U. S. *v* Gilbert, 2 Sumner, 19; U. S. *v* Perez, 9 Wheaton, 579; 1 Opin. Att. Gen., 294.

Limitation of time of prosecution. 103 Art. War.

ART. 103. No person shall be liable to be tried and punished by a general court-martial for any offense which appears to have been committed more than two years before the issuing of the order for such trial, unless, by

---

prosecuted, before a court-martial, to a final conviction or acquittal; and, therefore, that an officer or soldier, after having been duly convicted or acquitted by such a court, could not be subjected to a second military trial for the same offense except by and upon his own waiver and consent. For, that the accused may waive objection to a second trial was held by Attorney-General Wirt in 1818, (*a*) and has since been regarded as settled law. Dig. Opin. J. A. G., par. 303.

Where an officer or soldier has been duly acquitted or convicted of a specific offense he can not, against his consent, be brought to trial for a minor offense included therein, and an acquittal or conviction of which was necessarily involved in the finding upon the original charge. Thus, a party convicted or acquitted of a desertion can not afterwards be brought to trial for an absence without leave committed in and by the same act. Ibid., par. 304.

Held that there was no "second" trial, in the sense of the article, in the following cases, viz: Where the party, after being arraigned or tried before a court which was illegally constituted or composed, or was without jurisdiction, was again brought to trial before a competent tribunal; where the accused, having been arraigned upon and having pleaded to certain charges, was rearraigned upon a new set of charges substituted for the others, which were withdrawn; where one of several distinct charges upon which the accused had been arraigned was withdrawn pending the trial, and the accused, after a trial and finding by the court upon the other charges, was brought to trial anew upon the charge thus withdrawn; where, after proceedings commenced, but discontinued without a finding, the accused was brought to trial anew upon the same charge; where, after having been acquitted or convicted upon a certain charge which did not in fact state the real offense committed, the accused was brought to trial for the same act, but upon a charge setting forth the true offense; where the accused was brought to trial after having had his case fully investigated by a different court, which, however, failed to agree in a finding and was consequently dissolved; (*b*) where the first court was dissolved because reduced below five members by the casualties of the service pending the trial; where, for any cause, there was a "mistrial," or the trial first entered upon was terminated, or the court dissolved, at any stage of the proceedings before a final acquittal or conviction. Ibid., par. 305.

Where an officer or soldier, having been acquitted or convicted of a criminal offense by a civil court, is brought to trial by a court-martial for a military offense involved in his criminal act, he can not plead "a former trial," in the sense of this article. So, where the trial for the military offense has preceded, he can not plead autrefois acquit or convict to an indictment for the civil crime committed in and by the same act. (*c*) Ibid., par. 306.

Where the accused has been once duly convicted or acquitted, he has been "tried" in the sense of the article, and can not be tried again against his will, though no action whatever be taken upon the proceedings by the reviewing authority, or though the proceedings, findings (and sentence, if any), be wholly disapproved by him. (*d*) It is immaterial whether the former conviction or acquittal is approved or disapproved. Ibid., par. 307.

That an accused has been, in the opinion of the reviewing authority, inadequately sentenced, either by a general or an inferior court, can not except his case from the application of this article; though insufficiently punished, he can not be tried again for the same offense. Ibid., par. 308.

Where an officer, who had killed a superior officer in an altercation at a military post, was brought to trial before a civil court on a charge of murder and acquitted, and was subsequently arraigned before a court-martial for the offense against military discipline involved in his criminal act, *held* that a plea of former trial interposed by him was properly overruled by the court. Ibid., par. 309.

A soldier was convicted of "manslaughter," but the findings and sentence were disapproved. He was then brought to trial on a charge of mutiny, as committed on the occasion of the homicide, the latter being alluded to in the specification as an incidental circumstance of aggravation, and was found guilty and sentenced. *Held* that the accused was not, in the sense of this article, "tried a second time for the

---

[a] I Opin. Att. Gen., 233. And see also VI, ibid., 205.

[b] See U. S. *v.* Perez, 9 Wheat., 579.

[c] See VI Opin. Att. Gen., 413, 506.

[d] Compare Macomb, section 159; O'Brien, 277; Rules for Bombay Army, 45.

reason of having absented himself, or of some other manifest impediment, he shall not have been amenable to justice within that period.[1]

Limitation in desertion, etc.

No person shall be tried or punished by a court-martial for desertion in time of peace and not in the face of an

---

same offense," the mutiny not consisting in the act of homicide, but constituting a distinct offense. Ibid., par. 310.

There can not, in view of this article, be a second trial where the offense is really the same, though it may be charged under a different description and under a different article of war. Thus, where the Government elects to try a soldier under the thirty-second article for "absence without leave," or under the forty-second for "lying out of quarters," and the testimony introduced develops the fact that the offense was desertion, the accused, after an acquittal or conviction, can not legally be brought a second time to trial for the same absence charged as a desertion. Ibid., par., 311.

[1] The prohibition of the article relates only to prosecutions before general courts-martial; it does not apply to trials before inferior courts. So courts of inquiry may be convened without regard to the period which has elapsed since the dates of the act or acts to be investigated. Nor does the limitation apply to the hearing of complaints by regimental courts under article 30. Dig. Opin. J. A. G., par. 318; VI Opin. Att. Gen., 239.

In view of this article, it is the duty of the Government to prosecute an offender within a reasonable time after the commission of the offense. Dig. Opin. J. A. G., par. 319.

It has been held, under the original article, that an officer or soldier could not be legally arrested, with a view to trial, where more than two years (in which he was amenable to justice) had elapsed since his offense. Ibid., 123, par. 7.

The limitation is properly matter of defense to be specially pleaded and proved. (*a*) By pleading guilty the accused is assumed to waive the right to plead the limitation by a special plea in bar. But, under a plea of not guilty, the limitation may be taken advantage of by evidence showing that it has taken effect. Ibid., par. 320.

By the absence referred to in the original article, in the term "unless by reason of having absented himself," is believed to be intended, not necessarily an absence from the United States, but an absence by reason of a "fleeing from justice," analogous to that specified in section 1045, Revised Statutes, which has been held to mean leaving one's home, residence, or known abode within the district, or concealing one's self therein, with intent to avoid detection or punishment for the offense against the United States. (*b*) Thus *held* that, in a case other than desertion, it was not essential or the prosecution to be prepared to prove that the accused had been beyond the territorial jurisdiction of the United States in order to save the case from the operation of the limitation. Ibid., par. 321.

A court-martial, in a case of an offense other than desertion, sustained a plea of the statute of limitations in bar of trial for the reason that the judge-advocate could produce no evidence to show that the accused was not within the territorial jurisdiction of the United States during his absence. *Held* that such showing was not necessary, and that it was sufficient that the absence should be any unauthorized absence from the military service whereby the absentee evades and for the time escapes trial. This construction of the term "absented himself" in the article corresponds to that placed on the words "fleeing from justice," as used in the statutes of the United States to designate those whom the statutes of limitation for the prosecution of crimes do not protect. Ibid., par. 322.

In the case of an enlisted man charged with desertion, the act of desertion having been committed more than ten years prior to the reference of the charges for trial, the accused pleaded the statute of limitations in bar of trial. The court declined to entertain the plea, and, regarding the statement of the accused as an instance of answering "foreign to the purpose," proceeded with the trial as if a plea of not guilty had been entered. As no action was taken by the court upon the plea of the accused, and no testimony taken at the trial with a view to establish his identity, the proceedings, finding, and sentence were disapproved by the Secretary of War. G. C. M. O. No. 44, A. G. O., 1884.

---

[a] *In re* Bogart, 2 Sawyer, 397; *In re* Waite, 17 Fed. Rep., 723; *In re* Davison, 21, ibid., 618; *In re* Zimmerman, 30, ibid., 176; People *v* Price (Michigan), 41 N W. Rep., 853; State *v.* Strong, 39 La. Ann., 1081; G. O. 22, A. G. O., 1893. See, also, U. S. *v.* Cooke, 17 Wallace, 168.

[b] U. S. *v.* O'Brien, 2 Dillon, 381; U. S. *v.* White, 5 Cranch C. C., 38, 73; I Gould and Tucker, Notes on Revised Statutes, 349.

Exception.
Apr. 11, 1890, v. 26, p. 54.

Beginning of limitation.

enemy, committed more than two years before the arraignment of such person for such offense, unless he shall meanwhile have absented himself from the United States, in which case the time of his absence shall be excluded in computing the period of the limitation: *Provided*, That said limitation shall not begin until the end of the term for which said person was mustered into the service. *Act of April 11, 1890 (26 Stat. L., 54).*

Approval of sentence.
July 27, 1892, v. 27, p. 278.
104 Art. War.

ART. 104. No sentence of a court-martial shall be carried into execution until the same shall have been approved by the officer ordering the court, or by the officer commanding for the time being.[1] *Act of July 27, 1892 (27 Stat. L., 278).*

Confirmation of death sentence.
July 17, 1862, c. 201, s. 5, v 12, p. 598; Mar. 3, 1863, c. 75, s. 21, v. 12, p. 735; July 2, 1864, c. 215, s. 1, v. 13, p. 356.
105 Art. War.

ART. 105. No sentence of a court-martial inflicting the punishment of death shall be carried into execution until it shall have been confirmed by the President, except in the cases of persons convicted in time of war as spies, mutineers, deserters, or murderers, and in the cases of guerrilla marauders convicted in time of war of robbery, burglary, arson, rape, assault with intent to commit rape, or of violation of the laws and customs of war; and in such excepted cases the sentence of death may be carried into execution upon confirmation by the commanding general in the field or the commander of the department, as the case may be.[1]

Confirmation of dismissals in time of peace.
106 Art. War.

ART. 106. In time of peace no sentence of a court-martial directing the dismissal of an officer shall be carried into execution until it shall have been confirmed by the President.[1]

Dismissal by division or brigade courts.
Dec. 24, 1861, c. 3, v. 12, p. 330.
107 Art. War.

ART. 107. No sentence of a court-martial appointed by the commander of a division or of a separate brigade of troops directing the dismissal of an officer shall be carried into execution until it shall have been confirmed by the general commanding the army in the field to which the division or brigade belongs.[2]

---

[1] See the title "The Reviewing Authority" in the chapter entitled MILITARY TRIBUNALS.

[2] For instances in which the proceedings in important cases were disapproved by the President on account of their not having been reviewed by the officer ordering the court, see G. O. 55, A. G. O., 1863; ibid., 101, 1863; ibid., 168, 1863, and 180, 1863.

In view of the provisions of the one hundred and sixth and this article, *held* that when *in time of war* a department commander is the reviewing authority, no confirmation of a sentence of dismissal by higher authority is necessary, but when a division or separate brigade commander is the reviewing authority, such sentence must be confirmed by the general commanding the army in the field to which the division or brigade belongs. And in the latter case, if the division or brigade does not belong to a separate army in the field, the commanding general of the Army of the United States would be the proper confirming authority, within the meaning of this article. Dig. Opin. J. A. G., par. 338.

General officers; sentences respecting.
108 Art. War.

ART. 108. No sentence of a court-martial, either in time of peace or in time of war, respecting a general officer shall be carried into execution until it shall have been confirmed by the President.[1]

Confirmation by officer ordering court.
109 Art. War.

ART. 109. All sentences of a court-martial may be confirmed and carried into execution by the officer ordering the court, or by the officer commanding for the time being, where confirmation by the President or by the commanding general in the field or commander of the department is not required by these articles.[2]

* * * * * * *

Suspension of sentences of death or dismissal.
111 Art. War.

ART. 111. Any officer who has authority to carry into execution the sentence of death or of dismissal of an officer may suspend the same until the pleasure of the President shall be known, and in such case he shall immediately transmit to the President a copy of the order of suspension, together with a copy of the proceedings of the court.[3]

Pardon and mitigation of sentences.
July 17, 1862, c. 201, s. 7, v. 12, p. 598.
112 Art. War.

ART. 112. Every officer who is authorized to order a general court-martial shall have power to pardon or mitigate any punishment adjudged by it, except the punishment of death or of dismissal of an officer. Every officer commanding a regiment or garrison in which a regimental or garrison court-martial may be held, shall have power to pardon or mitigate any punishment which such court may adjudge.[1]

---

[1] See the title "The Reviewing Authority" in the chapter entitled MILITARY TRIBUNALS.

[2] The One hundred and tenth Article of War, originally enacted as section 7 of the act of July 27, 1862 (12 Stat. L., 598), and as amended by the act of July 27, 1892 (27 Stat. L., 278), was repealed by the act of June 18, 1898, which substituted the new summary court for the old summary court, having jurisdiction for the trial of enlisted men for minor offenses committed in time of peace, and for the field officers' court, having similar jurisdiction in time of war.

Where the reviewing officer deems that the proceedings of the court are in any material particular erroneous or ill advised, his proper course in general will be to reconvene the court for the purpose of having the defect corrected, at the same time furnishing it with the grounds of his opinion. Thus, if he regards the sentence inadequate, he should, in reassembling the court for a revision of the same, state the reasons why he considers it to be disproportionate to the amount of criminality involved in the offense. But although he can not compel the court to adopt his views in regard to the supposed defect, he may, in a proper case, express his formal disapprobation of their neglect to do so. Thus where a court-martial, on being reconvened, with a view of giving it an opportunity to modify a sentence manifestly too lenient for the offense found, decided to adhere to the sentence as adjudged, and, on being again reassembled to consider further grounds presented by the reviewing commander for the infliction of a severer penalty, again declined to increase the punishment, *held* that it was within the authority of the reviewing officer, and would be no more than proper and dignified for him, in taking final action upon the case, to reflect upon the refusal of the court as ill judged and as having the effect to impair the discipline and prejudice the interest of the military service. Ibid., par. 2231.

[3] An officer suspending the execution of a sentence for the action of the President under this article should first formally *approve* the same. Simply to forward the proceedings, stating that the sentence has been suspended, is incomplete and irregular. If the commander *disapproves* the sentence, he should not, of course, suspend and trasmit under this article, since there remains nothing for the President to act upon. Ibid., par. 339.

Where a case is submitted to the President for his action under this article, he may approve or disapprove the sentence in whole or in part, and, if approving, may exercise the power of remission or mitigation. Ibid., par. 340.

Proceedings forwarded to Judge-Advocate-General.
July 17, 1862, c. 201, ss. 5, 6, v. 12.
113 Art. War.

ART. 113. Every judge-advocate, or person acting as such, at any general court-martial, shall, with as much expedition as the opportunity of time and distance of place may admit, forward the original proceedings and sentence of such court to the Judge-Advocate-General of the Army, in whose office they shall be carefully preserved.[2]

Party entitled to a copy.
114 Art. War.

ART. 114. Every party tried by a general court-martial shall, upon demand thereof, made by himself or by any person in his behalf, be entitled to a copy of the proceedings and sentence of such court.[2]

Courts of inquiry, how ordered.
115 Art. War.

ART. 115. A court of inquiry, to examine into the nature of any transaction of, or accusation or imputation against, any officer or soldier, may be ordered by the President or by any commanding officer; but, as courts of inquiry may be perverted to dishonorable purposes, and may be employed, in the hands of weak and envious commandants, as engines for the destruction of military merit, they shall never be ordered by any commanding officer, except upon a demand by the officer or soldier whose conduct is to be inquired of.[3]

Members of court of inquiry.
116 Art. War.

ART. 116. A court of inquiry shall consist of one or more officers, not exceeding three, and a recorder, to reduce the proceedings and evidence to writing.[3]

Oaths of members and recorder of court of inquiry.
117 Art. War.

ART. 117. The recorder of a court of inquiry shall administer to the members the following oath: "*You shall well and truly examine and inquire, according to the evidence, into the matter now before you, without partiality, favor, affection, prejudice, or hope of reward: So help you God.*" After which the president of the court shall administer to the recorder the following oath: "*You, A B, do swear that you will, according to your best abilities, accurately and impartially record the proceedings of the court and the evidence to be given in the case in hearing: So help you God.*"[3]

Witnesses before courts of inquiry.

ART. 118. A court of inquiry, and the recorder thereof, shall have the same power to summon and examine witnesses as is given to courts-martial and the judge-advocates thereof. Such witnesses shall take the same oath which is taken by witnesses before courts-martial,[1] and the party accused shall be permitted to examine and cross-examine them, so as fully to investigate the circumstances in question.[2]

---

[1] See the title, "*The Reviewing Authority,*" in the chapter entitled MILITARY TRIBUNALS. Sec. 5 of the act of July 27, 1892 (27 Stat. L., 281), provides "that commanding officers authorized to approve the sentences of summary courts shall have the power to remit or mitigate the same." See also note to par. 2, "The pardoning power."

[2] See the title, "*The Record,*" in the chapter entitled MILITARY TRIBUNALS.

[3] See the title, "*Courts of Inquiry,*" in the chapter entitled MILITARY TRIBUNALS.

Mar. 3, 1863, c. 75, s. 27, v. 12, p. 736; Mar. 3, 1863, c. 79, s. 25, v. 12, p. 754.
118 Art. War.

Opinion; when given by.
119 Art. War.

ART. 119. A court of inquiry shall not give an opinion on the merits of the case inquired of unless specially ordered to do so.[2]

Authentication of proceedings of court of inquiry.
120 Art. War.

ART. 120. The proceedings of a court of inquiry must be authenticated by the signatures of the recorder and the president thereof, and delivered to the commanding officer.[2]

Proceedings of court of inquiry used as evidence.
121 Art. War.

ART. 121. The proceedings of a court of inquiry may be admitted as evidence by a court-martial, in cases not capital nor extending to the dismissal of an officer: *Provided*, That the circumstances are such that oral testimony can not be obtained.[2]

Command, when different corps happen to join.
122 Art. War.

ART. 122. If, upon marches, guards, or in quarters, different corps of the Army happen to join or do duty together, the officer highest in rank of the line of the Army, Marine Corps, or militia, by commission, there on duty or in quarters, shall command the whole, and give orders for what is needful to the service, unless otherwise specially directed by the President, according to the nature of the case.[3]

Regular and Volunteer officers on same footing as to rank, etc.
Mar. 2, 1867, c. 159, s. 2, v. 14, p. 435.
123 Art. War.

ART. 123. In all matters relating to the rank, duties, and rights of officers, the same rules and regulations shall apply to officers of the Regular Army and to volunteers commissioned in, or mustered into said service, under the laws of the United States, for a limited period.[3]

Rank of militia officers on duty with officers of Regular or Volunteer forces.
Mar. 2, 1867, c. 159, s. 2, v. 14, p. 435.
124 Art. War.

ART. 124. Officers of the militia of the several States, when called into the service of the United States, shall on all detachments, courts-martial, and other duty wherein they may be employed in conjunction with the Regular or Volunteer forces of the United States, take rank next after all officers of the like grade in said Regular or Volunteer forces, notwithstanding the commissions of such militia officers may be older than the commissions of the said officers of the Regular or Volunteer forces of the United States.[3]

Deceased officers' effects.
125 Art. War.

ART. 125. In case of the death of any officer, the major of his regiment, or the officer doing the major's duty, or the second officer in command at any post or garrison, as the case may be, shall immediately secure all his effects then in camp or quarters, and shall make and transmit to the office of the Department of War, an inventory thereof.[1]

---

[1] So in the roll.
[2] See the title "*Courts of Inquiry*," in the chapter entitled MILITARY TRIBUNALS.
[3] See chapter entitled RANK AND COMMAND, ETC.

Deceased soldiers' effects. 126 Art. War.

ART. 126. In case of the death of any soldier, the commanding officer of his troop, battery, or company shall immediately secure all his effects then in camp or quarters, and shall, in the presence of two other officers, make an inventory thereof, which he shall transmit to the office of the Department of War.

Effects of deceased officers and soldiers to be accounted for. 127 Art. War.

ART. 127. Officers charged with the care of the effects of deceased officers or soldiers shall account for and deliver the same, or the proceeds thereof, to the legal representatives of such deceased officers or soldiers. And no officer so charged shall be permitted to quit the regiment or post until he has deposited in the hands of the commanding officer all the effects of such deceased officers or soldiers not so accounted for and delivered.[2]

Articles of War to be published once in six months to every regiment, etc. 128 Art. War.

ART. 128. The foregoing articles shall be read and published, once in every six months, to every garrison, regiment, troop, or company in the service of the United States, and shall be duly observed and obeyed by all officers and soldiers in said service.

Spies. Apr. 10, 1806, c. 20, s. 2, v. 2, p. 371; Feb. 13, 1862, c. 25, s. 4, v. 12, p. 340; Mar. 3, 1863, c. 75, s. 38, v. 12, p. 737.

SEC. 1343. All persons who, in time of war, or of rebellion against the supreme authority of the United States, shall be found lurking or acting as spies, in or about any of the fortifications, posts, quarters, or encampments of any of the armies of the United States, or elsewhere, shall be triable by a general court-martial, or by a military commission, and shall, on conviction thereof, suffer death.

---

[1] See the title "*Deceased Officers*," in the chapter entitled COMMISSIONED OFFICERS.

[2] This article, in connection with the two preceding articles, provides for the securing of the effects of deceased officers and soldiers, making inventory of the same, and accounting for them to the proper legal representative, etc. These articles have special reference to cases of deaths of military persons while in active service in the field or at remote military posts, and their provisions apply only to such effects as are left by the deceased "in camp or quarters." See articles 125 and 126. An attempt by the commander, etc., to secure effects left elsewhere would not be within the authority here given and might subject the officer to the liability of an administrator; such a proceeding would not therefore be advisable. (*a*) Upon accounting to the duly qualified legal representative, as directed in the article, the responsibility of the officer is discharged, and it remains for the representative to dispose of the property according to the law applicable to the case. Dig. Opin. J. A. G., par. 373.

A military employee of the United States service having died in the service, his remains at the request of his relatives, were sent to them on a Mississippi steamboat. Wages being due to the employee at the time of his death, the disbursing officer paid out of these the charges of the transportation and turned over the balance to the man's heirs. *Held*, in view of the tenor and effect of this article, that the disposition of the funds in this case was erroneous, and that the full wages due (without deduction) should have been accounted for to the "legal representatives" of the deceased. Ibid., 140, par. 2.

---

a Compare Samuel, 659; Hough (Practice), 558.

APPENDICES.

I. THE GENEVA CONVENTION OF 1864.

II. ADDITIONAL ARTICLES OF OCTOBER 20, 1868.

III. ADDITIONAL AGREEMENT OF JULY 29, 1899, FOR THE ADAPTATION OF THE RULES OF THE GENEVA CONVENTION TO MARITIME WARFARE.

IV. THE AMERICAN NATIONAL RED CROSS.

V. THE ARMY REORGANIZATION ACT OF FEBRUARY 2, 1901.

VI. MAXIMUM PUNISHMENT ORDER.

VII. INSTRUCTIONS FOR THE GOVERNMENT OF THE ARMIES OF THE UNITED STATES IN THE FIELD (GENERAL ORDERS NO. 100, WAR DEPARTMENT, OF 1863).

VIII. CIVIL SERVICE RULES.

APPENDICES.

TREATIES, CONVENTIONS, AND AGREEMENTS.

AMELIORATION OF THE CONDITION OF THE WOUNDED IN TIME OF WAR.

Aug. 22, 1864.

Convention between the United States, Baden, Switzerland, Belgium, Denmark, Spain, France, Hesse, Italy, Netherlands, Portugal, Prussia, Würtemberg, Sweden, Greece, Great Britain, Mecklenburg-Schwerin, Turkey, Bavaria, Austria, Russia, Persia, Roumania, Salvador, Montenegro, Servia, Bolivia, Chili, Argentine Republic, Japan and Peru; with additional articles: For the amelioration of the wounded in armies in the field; concluded August 22, 1864; acceded to by the President March 1, 1882; accession concurred in by the Senate March 16, 1882; proclaimed as to the original convention, but with reserve as to the additional articles, July 26, 1882.[1]

---

[1] The President's ratification of the act of accession, as transmitted to Berne and exchanged for the ratifications of the other signatory and adhesory powers, embraces the French text of the convention of August 22, 1864, and the additional articles of October 20, 1868. The French text is therefore, for all international purposes, the standard one.

The several contracting parties to the said convention exchanged the ratifications thereof at Geneva, on the 22d day of June, 1865.

The several states hereinafter named have signified their adherence to the above convention, in virtue of Article IX, on the dates as noted in the following list:

Sweden	December 13, 1864.
Greece	January 5–17, 1865.
Great Britain	February 18, 1865.
Mecklenburg-Schwerin	March 9, 1865.
Turkey	July 5, 1865.
Würtemberg	June 2, 1866.
Hesse	June 22, 1866.
Bavaria	June 30, 1866.
Austria	July 21, 1866.
Russia	May 10–22, 1867.
Persia	December 5, 1874.
Roumania	November 18–30, 1874.
Salvador	December 30, 1874.
Montenegro	November 17–29, 1875.
Servia	March 24, 1876.
Bolivia	October 16, 1879.
Chili	November 15, 1879.
Argentine Republic	November 25, 1879.
Peru	April 22, 1880.

Hospitals and ambulances with sick or wounded protected and held inviolate, etc.

ARTICLE I. Ambulances and military hospitals shall be acknowledged to be neuter, and, as such, shall be protected and respected by belligerents so long as any sick or wounded may be therein.

Exception.

Such neutrality shall cease if the ambulances or hospitals should be held by a military force.

Employees, etc., respected as neutrals.

ART. II. Persons employed in hospitals and ambulances, comprising the staff for superintendence, medical service, administration, transport of wounded, as well as chaplains, shall participate in the benefit of neutrality, whilst so employed, and so long as there remain any wounded to bring in or to succor.

Employees, etc., protected by occupying forces.

ART. III. The persons designated in the preceding article may, even after occupation by the enemy, continue to fulfill their duties in the hospital or ambulance which they serve, or may withdraw in order to rejoin the corps to which they belong.

Under such circumstances, when these persons shall cease from their functions, they shall be delivered by the occupying army to the outposts of the enemy.

Employees in hospitals to take away private property only.

ART. IV. As the equipment of military hospitals remains subject to the laws of war, persons attached to such hospitals can not, in withdrawing, carry away any

ARTICLE I. Les ambulances et les hôpitaux militaires seront reconnus neutres, et, comme tels, protégés et respectés par les belligérants aussi longtemps qu'il s'y trouvera des malades ou des blessés.

La neutralité cesserait, si ces ambulances ou ces hôpitaux étaient gardés par une force militaire.

ART. II. Le personnel des hôpitaux et des ambulances, comprenant l'intendance, les services de santé, d'administration, de transport des blessés, ainsi que les aumôniers, participera au bénéfice de la neutralité lorsqu'il fonctionnera, et tant qu'il restera des blessés à relever ou à secourir.

ART. III. Les personnes désignées dans l'article précédent pourront, même après l'occupation par l'ennemi, continuer à remplir leurs fonctions dans l'hôpital ou l'ambulance qu'elles desservent, ou se retirer pour rejoindre le corps auquel elles appartiennent.

Dans ces circonstances, lorsque ces personnes cesseront leurs fonctions, elles seront remises aux avant-postes ennemis, par les soins de l'armée occupante.

ART. IV. Le matériel des hôpitaux militaires demeurant soumis aux lois de la guerre, les personnes attachés à ces hôpitaux en pourront, en se retirant, emarticles but such as are their private property.

Under the same circumstances an ambulance shall, on the contrary, retain its equipment.

Art. V. Inhabitants of the country who may bring help to the wounded shall be respected, and shall remain free. The generals of the belligerent Powers shall make it their care to inform the inhabitants of the appeal addressed to their humanity, and of the neutrality which will be the consequence of it.

Any wounded man entertained and taken care of in a house shall be considered as a protection thereto. Any inhabitant who shall have entertained wounded men in his house shall be exempted from the quartering of troops, as well as from a part of the contributions of war which may be imposed.

Art. VI. Wounded or sick soldiers shall be entertained and taken care of, to whatever nation they may belong.

Commanders-in-chief shall have the power to deliver immediately to the outposts of the enemy soldiers who have been wounded in an engagement, when circumstances permit this to be done, and with the consent of both parties.

Those who are recognized, after their wounds are

porter que les objets qui sont leur propriété particulière.

Dans les mêmes circonstances, au contraire, l'ambulance conservera son matériel.

Persons serving the wounded to remain free.

Art. V. Les habitants du pays qui porteront secours aux blessés seront respectés, et demeureront libres. Les généraux des Puissances belligérantes auront pour mission de prévenir les habitants de l'appel fait à leur humanité, et de la neutralité qui en sera la conséquence.

Houses where the wounded are cared for to be protected.

Tout blessé recueilli et soigné dans une maison y servira de sauvegarde.

Exemptions for care of wounded.

L'habitant qui aura recueilli chez lui des blessés sera dispensé du logement des troupes, ainsi que d'une partie des contributions de guerre qui seraient imposées.

Soldiers sick or wounded of any nation to be relieved and cared for.

Art. VI. Les militaires blessés ou malades seront recueillis et soignés, à quelque nation qu'ils appartiendront.

Delivery of wounded, etc.

Les Commandants-en-chef auront la faculté de remettre immédiatement aux avant-postes ennemis, les militaires blessés pendant le combat, lorsque les circonstances le permettront et du consentement des deux partis.

Soldiers incapacitated for service to be sent home.

Seront renvoyés dans leurs pays ceux qui, après guérihealed, as incapable of serving, shall be sent back to their country.

son, seront reconnus incapables de servir.

Conditions of return.

The others may also be sent back, on condition of not again bearing arms during the continuance of the war.

Les autres pourront être également renvoyés, à la condition de ne pas reprendre les armes pendant la durée de la guerre.

Evacuations, etc., to have absolute neutrality.

Evacuations, together with the persons under whose directions they take place, shall be protected by an absolute neutrality.

Les évacuations, avec le personnel qui les dirige, seront couvertes par une neutralité absolue.

Hospital, ambulance, and evacuation flag, etc.

Art. VII. A distinctive and uniform flag shall be adopted for hospitals, ambulances and evacuations. It must, on every occasion, be accompanied by the national flag. An arm-badge (brassard) shall also be allowed for individuals neutralized, but the delivery thereof shall be left to military authority.

Arm-badge.

Art. VII. Un drapeau distinctif et uniforme sera adopté pour les hôpitaux, les ambulances et les évacuations. Il devra être, en toute circonstance, accompagné du drapeau national. Un brassard sera également admis pour le personnel neutralisé, mais la délivrance en sera laissée à l'autorité militaire.

Flag and arm-badge to bear red cross, etc.

The flag and the arm-badge shall bear a red cross on a white ground.

Le drapeau et le brassard porteront croix rouge sur fond blanc.

Execution of details of convention.

Art. VIII. The details of execution of the present convention shall be regulated by the commanders-in-chief of belligerent armies, according to the instructions of their respective governments, and in conformity with the general principles laid down in this convention.[1]

Art. VIII. Les détails d'exécution de la présente convention seront réglés par les Commandants en chef des armées belligérantes, d'après les instructions de leurs Gouvernements repectifs, et conformément aux principes généraux énoncés dans cette convention.

---

[1] REGULATIONS.

1. All persons connected with the Medical Department of the Army in the field, or referred to in Article II of the treaty, shall wear habitually during the war, on the left sleeve of the coat, midway between the shoulder and elbow, a brassard or arm badge, consisting of a red cross on a white ground.

2. All hospitals, ambulances, and field stations of the Medical Department will habitually display the Red Cross flag accompanied by the national flag.

3. Permits, in duplicate, for civilians to be present with the Army in the service of the Medical Department may be given by authority of a division commander; one

Art. IX. The high contracting Powers have agreed to communicate the present convention to those Governments which have not found it convenient to send plenipotentiaries to the International Conference at Geneva, with an invitation to accede thereto; the protocol is for that purpose left open.

Art. X. The present convention shall be ratified, and the ratifications shall be exchanged at Berne, in four months, or sooner, if possible.

In faith whereof the respective Plenipotentiaries have signed it and have affixed their seals thereto.

Done at Geneva, the twenty-second day of the month of August of the year one thousand eight hundred and sixty-four.

[L. S.] General G. H. Dufour.
[L. S.] G. Moynier.
[L. S.] Dr. Lehmann.
[L. S.] Dr. Robert Volz.
[L. S.] Steiner.

Invitation to be made to certain governments to accede to convention.

Art. IX. Les hautes Puissances contractantes sont convenues de communiquer la présente convention aux Gouvernements qui n'ont pu envoyer des Plénipotentiaires à la Conférence internationale de Genève, en les invitant à y accéder; le protocole est à cet effet laissé ouvert.

Protocol to remain open, etc.

Ratification.

Art. X. La présente convention sera ratifiée, et les ratifications en seront échangées à Berne, dans l'espace de quatre mois, ou plus tôt si faire se peut.

Signatures.

En foi de quoi les Plénipotentiaires respectifs l'ont signée et y ont apposé le cachet de leurs armes.

Fait à Genève, le vingt-deuxième jour du mois d'août de l'an mil huit-cent soixante-quatre.

[L. S.] Général G. H. Dufour.
[L. S.] G. Moynier.
[L. S.] Dr. Lehmann.
[L. S.] Dr. Robert Volz.
[L. S.] Steiner.

---

copy of the permit will be retained by the person neutralized and its duplicate should be forwarded promptly to the Chief Surgeon of the Army.

4. Persons neutralized under this authority will report themselves at once to the chief surgeon of division for instructions.

5. The wearing of the arm brassard by any person not officially neutralized is prohibited. G. O. 47, A. G. O., 1898.

Hospital ships.—The following instructions were also promulgated in respect to the hospital ship *Relief:*

"The steamship recently purchased for the use of the Medical Department of the Army as a hospital ship will be named the *Relief.* In accordance with the terms of the Geneva Convention the Geneva Cross flag will be carried at the fore whenever the national flag is flown, and the neutrality of the vessel will at all times be preserved.

"No guns, ammunition, or articles contraband of war, except coal or stores necessary for the movement of the vessel, shall be placed on board; nor shall the vessel be used as a transport for the carrying of dispatches, officers or men not sick or disabled, other than those belonging to the Medical Department." G. O. 53, A. G. O., 1898.

Similar instructions were also issued by the United States Navy Department.

[L. S.] VISSCHERS.
[L. S.] FENGER.
[L. S.] J. HERIBERTO GARCÍA DE QUEVEDO.
[L. S.] CH. JAGERSCHMIDT.
[L. S.] S. DE PRÉVAL.
[L. S.] BOUDIER.
[L. S.] BRODRÜCK.
[L. S.] CAPELLO.
[L. S.] F. BAROFFIO.
[L. S.] WESTENBERG.
[L. S.] JOSÉ ANTONIO MARQUES.
[L. S.] DE KAMPTZ.
[L. S.] LŒFFLER.
[L. S.] RITTER.
[L. S.] DR. HAHN.

[L. S.] VISSCHERS.
[L. S.] FENGER.
[L. S.] J. HERIBERTO GARCÍA DE QUEVEDO.
[L. S.] CH. JAGERSCHMIDT.
[L. S.] S. DE PRÉVAL.
[L. S.] BOUDIER.
[L. S.] BRODRÜCK.
[L. S.] CAPELLO.
[L. S.] F. BAROFFIO.
[L. S.] WESTENBERG.
[L. S.] JOSÉ ANTONIO MARQUES.
[L. S.] DE KAMPTZ.
[L. S.] LŒFFLER.
[L. S.] RITTER.
[L. S.] DR. HAHN.

ADDITIONAL ARTICLES.[1]

Proposed extension of provisions of convention to armies on the sea.

The governments of North Germany, Austria, Baden, Bavaria. Belgium, Denmark, France, Great Britain, Italy, the Netherlands, Sweden and Norway, Switzerland, Turkey, and Würtemburg, desiring to extend to armies on the sea the advantages of the Convention concluded at Geneva the 22d of August, 1864, for the amelioration of the condition of wounded soldiers in armies in the field, and to further particularize some of the stipulations of the said Convention, have named for their commissioners:

Rights of employees, etc., in hospitals or ambulances; their release and departure.

ARTICLE I. The persons designated in Article II. of the Convention shall, after the occupation by the enemy, continue to fulfil their duties, according to their wants, to the sick and wounded in the ambulance or the hospital which they serve. When they request to withdraw, the commander of the occupying troops shall fix the time of departure, which he shall only

Les Gouvernements de l'Allemagne du Nord, de l'Autriche, Bade, la Bavière, la Belgique, le Danemark, la France, la Grande Bretagne, l'Italie, les Pays-Bas, Suède et Norvége, la Suisse, la Turquie, le Wurtemberg, désirant étendre aux armées de mer les avantages de la Convention conclue à Genève, le 22 août 1864, pour l'amélioration du sort des militaires blessés dans les armées en campagne, et préciser davantage quelques-unes des stipulations de la dite Convention, ont nommé pour leurs Commissaires:

ARTICLE I. Le personnel désigné dans l'article deux de la Convention continuera, après l'occupation par l'ennemi, à donner dans la mesure des besoins, ses soins aux malades et aux blessés de l'ambulance on de l'hôspital qu'il dessert. Lorsqu'il demandera à se retirer, le commandant des troupes occupantes fixera le moment de ce départ, qu'il ne pourra toutefois be allowed to delay for a short time in case of military necessity.

---

[1] On the 20th of October, 1868, the above additional articles were proposed and signed at Geneva on behalf of Great Britain, Austria, Baden, Bavaria, Belgium, Denmark, France, Italy, Netherlands, North Germany, Sweden and Norway, Switzerland, Turkey, and Würtemberg.

ART. II. Arrangements will have to be made by the belligerent powers to ensure to the neutralized person, fallen into the hands of the army of the enemy, the entire enjoyment of his salary.

ART. III. Under the conditions provided for in Articles I. and IV. of the Convention, the name "ambulance"[1] applies to field hospitals and other temporary establishments, which follow the troops on the field of battle to receive the sick and wounded.

ART. IV. In conformity with the spirit of Article V. of the Convention, and to the reservations contained in the protocol of 1864, it is explained that for the appointment of the charges relative to the quartering of troops, and of the contributions of war, account only shall be taken in an equitable manner of the charitable zeal displayed by the inhabitants.

ART. V. In addition to Article VI. of the Convention, it is stipulated that, with the reservation of officers whose detention might be important to the fate of arms and within the limits fixed by the second paragraph of that article, the wounded fallen into the hands of the enemy shall be sent back to their country, after they are cured, or sooner if possible, on condition, nevertheless, of not again bearing arms during the continuance of the war.

[*Articles concerning the Marine.*]

ART. VI. The boats which, at their own risk and peril, during and after an engagement pick up the shipwrecked or wounded, or which having picked them up,

différer que pour une courte durée en cas de nécessités militaires.

Salary of neutrals etc., when in enemy's hands.

ART. II. Des dispositions devront être prises par les Puissances belligérantes pour assurer au personnel neutralisé, tombé entre les mains de l'armée ennemie, la jouissance intégrale de son traitement.

Definition of the term "ambulance."

ART. III. Dans les conditions prévues par les articles un et quatre de la Convention, la dénomination d'ambulance s'applique aux hôpitaux de campagne et autres établissements temporaires qui suivent les troupes sur les champs de bataille pour y recevoir des malades et des blessés.

Charges for quartering of troops, and contributions, etc.

ART. IV. Conformément à l'esprit de l'article cinq de la Convention et aux réserves mentionnées au Protocole de 1864, il est expliqué que pour la répartition des charges relatives au logement de troupes et aux contributions de guerre, il ne sera tenu compte que dans la mesure de l'équité du zèle charitable déployé par les habitants.

Wounded to be returned to their country on condition of not again bearing arms in the war.

ART. V. Par extension de l'article six de la Convention, il est stipulé que sous la réserve des officiers dont la possession importerait au sort des armes, et dans les limites fixées par le deuxième paragraphe de cet article, les blessés tombés entre les mains de l'ennemi, lors même qu'ils ne seraient pas reconnus incapables de servir, devront être renvoyés dans leur pays après leur guérison, ou plus tôt si faire se peut, à la condition toutefois de ne pas reprendre les armes pendant la durée de la guerre.

Articles concernant la Marine.

Boats picking up the shipwrecked or wounded, etc.

ART. VI. Les embarcations qui, à leurs risques et périls, pendant et après le combat, recueillent ou qui, ayant recueilli des naufragés ou des blessés, les portent à bord

---

[1] This interpretation is of especial importance in the United States, where the term "ambulance" is generally applied to a vehicle for the transportation of the sick and wounded.

convey them on board a neutral or hospital ship, shall enjoy, until the accomplishment of their mission, the character of neutrality, so far as the circumstances of the engagement and the position of the ships engaged will permit.

The appreciation of these circumstances is entrusted to the humanity of all the combatants. The wrecked and wounded thus picked and saved must not serve again during the continuance of the war.

Religious, medical, and hospital staff of a captured vessel declared neutral.

ART. VII. The religious, medical, and hospital staff of any captured vessel are declared neutral, and, on leaving the ship, may remove the articles and surgical instruments which are their private property.

Duties of staff officers, etc.

ART. VIII. The staff designated in the preceding article must continue to fulfil their functions in the captured ship, assisting in the removal of the wounded made by the victorious party; they will then be at liberty to return to their country, in conformity with the second paragraph of the first additional article.

Pay and allowance of staff.

The stipulations of the second additional article are applicable to the pay and allowance of the staff.

Captured hospital ships to remain under martial law, etc.; not to be used for other purposes.

ART. IX. The military hospital ships remain under martial law in all that concerns their stores; they become the property of the captor, but the latter must not divert them from their special appropriation during the continuance of the war.[1]

d'un navire soit neutre, soit hospitalier, jouiront jusqu'à l'accomplissement de leur mission de la part de neutralité que les circonstances du combat et la situation des navires en conflit permettront de leur appliquer.

L'appéciation de ces circonstances est confiée à l'humanité de tous les combattants. Les naufragés et les blessés ainsi recueillis et sauvés ne pourront servir pendant la durée de la guerre.

ART. VII. Le personnel religieux, médical et hospitalier de tout bâtiment capturé, est déclaré neutre. Il emporte, en quittant le navire, les objets et les instruments de chirurgie qui sont sa propriété particulière.

ART. VIII. Le personnel désigné dans l'article précédent doit continuer à remplir ses fonctions sur la bâtiment capturé, concourir aux évacuations de blessés faites par le vainqueur, puis il doit être libre de rejoindre son pays, conformément au second paragraphe du premier article additionnel ci-dessus.

Les stipulations du deuxième article additionnel ci-dessus sont applicables au traitement de ce personnel.

ART. IX. Les bâtiments hôpitaux militaires restent soumis aux lois de la guerre, en ce qui concerne leur matériel; ils deviennent la propriété du capteur, mais celuici ne pourra les détourner de leur affection spéciale pendant la durée de la guerre.

---

[1] In the published English text, from which this version of the Additional Articles is taken, the following paragraph (marked in brackets) appears in continuation of Article IX. It is not, however, found in the original French text adopted by the Geneva conference October 20, 1868:

[The vessels not equipped for fighting, which, during peace, the Government shall have officially declared to be intended to serve as floating hospital ships, shall, however, enjoy during the war complete neutrality, both as regards stores, and also as regards their staff, provided their equipment is exclusively appropriated to the special service on which they are employed.]

By an instruction sent to the United States minister at Berne, January 20, 1883, the right is reserved to omit this paragraph from the English text, and to make any other necessary corrections, if at any time hereafter the Additional Articles shall be completed by the exchange of the ratifications hereof between the several signatory and adhering powers.

ART. X. Any merchantman, to whatever nation she may belong, charged exclusively with removal of sick and wounded, is protected by neutrality, but the mere fact, noted on the ship's books, of the vessel having been visited by an enemy's cruiser, renders the sick and wounded incapable of serving during the continuance of the war. The cruiser shall even have the right of putting on board an officer in order to accompany the convoy, and thus verify the good faith of the operation.

If the merchant ship also carries a cargo, her neutrality will still protect it, provided that such cargo is not of a nature to be confiscated by the belligerents.

The belligerents retain the right to interdict neutralized vessels from all communication, and from any course which they may deem prejudicial to the secrecy of their operations. In urgent cases special conventions may be entered into between commanders-in-chief, in order to neutralize temporarily and in a special manner the vessel intended for the removal of the sick and wounded.

ART. XI. Wounded or sick sailors and soldiers, when embarked, to whatever nation they may belong, shall be protected and taken care of by their captors.

Their return to their own country is subject to the provisions of Article VI. of the Convention, and of the additional Article V.

ART. XII. The distinctive flag to be used with the national flag, in order to indicate any vessel or boat which may claim the benefits of neutrality, in virtue of the principles of this Convention, is a white flag with a red cross. The belligerents may exercise in this respect any mode of verification which they may deem necessary.

Merchant vessels performing hospital duty to be treated as neutral; visited by enemy's cruiser rendering sick and wounded incapacitated from further war service.

ART. X. Tout bâtiment de commerce à quelque nation qu'il appartienne, chargé exclusivement de blessés et de malades dont il opère l'évacuation, est couvert par la neutralité; mais le fait seul de la visite, notifié sur le journal du bord, par un crosieur ennemi, rend les blessés et les malades incapable de servir pendant la durée de la guerre. Le croiseur aura même le droit de mettre à bord un commissaire pour accompagner le convoi et vérifier ainsi la bonne foi de l'opération.

Cargo of merchant ship protected; when; proviso.

Si le bâtiment de commerce contenait en outre un chargement, la neutralité le couvrirait encore pourvu que ce chargement ne fût pas de nature à être confisqué par le belligérant.

Right of belligerents.

Les belligérants conservent le droit d'interdire aux bâtiments neutralisés toute communication et toute direction qu'ils jugeraient nuisibles au secret de leurs opérations. Dans les cas urgents, des conventions particulières pourront être faites entre les commandants-en-chef pour neutraliser momentanément d'une manière spéciale les navires destinés à l'évacuation des blessés et des malades.

Wounded or sick sailors and soldiers, when embarked, etc.

ART. XI. Les marins et les militaires embarqués, blessés ou malades, à quelque nation qu'ils appartiennent, seront protégés et soignés par les capteurs.

Return to native country.

Leur repatriement est soumis aux prescriptions de l'article six de la Convention et de l'article cinq additionnel.

White flag with red cross, etc., used by vessels claiming neutrality.

ART. XII. Le drapeau distinctif à joindre au pavillon national pour indiquer un navire ou une embarcation quelconque qui réclame le bénéfice de la neutralité, en vertu des principes de cette Convention, est le pavillon blanc à croix rouge. Les belligérants exercent à cet égard toute vérification qu'ils jugent nécessaire.

Military hospitals painted white, etc.

Military hospital ships shall be distinguished by being painted white outside, with green strake.

Les bâtiments hôpitaux militaires seront distingués par une peinture extérieure blanche avec batterie verte.

Hospital ships, etc., and staff to be treated as neutral.

ART. XIII. The hospital ships which are equipped at the expense of the aid societies, recognized by the governments signing this Convention, and which are furnished with a commission emanating from the sovereign, who shall have given express authority for their being fitted out, and with a certificate from the proper naval authority that they have been placed under his control during their fitting out and on their final departure, and that they were then appropriated solely to the purpose of their mission, shall be considered neutral, as well as the whole of their staff. They shall be recognized and protected by the belligerents.

ART. XIII. Les navires hospitaliers, équipés aux frais des sociétés de secours reconnues par les Gouvernements signataires de cette Convention, pourvus de commission émanée du Souverain qui aura donné l'autorisation expresse de leur armement, et d'un document de l'autorité maritime compétente, stipulant qu'ils ont été soumis à son contrôle pendant leur armement et à leur départ final, et qu'ils étaient alors uniquement appropriés au but de leur mission, seront considérés comme neutres ainsi que tout leur personnel. Ils seront respectés et protégés par les belligérants.

Flag sign, etc., of neutrality.

They shall make themselves known by hoisting, together with their national flag, the white flag with a red cross. The distinctive mark of their staff, while performing their duties, shall be an armlet of the same colors. The outer painting of these hospital ships shall be white, with red strake.

Ils se feront reconnaître en hissant avec leur pavillon national, le pavillon blanc à croix rouge. La marque distinctive de leur personnel dans l'exercice de ses fonctions sera un brassard aux mêmes couleurs; leur peinture extérieure sera blanche avec batterie rouge.

Aid and assistance to wounded and wrecked belligerents, without distinction of nationality.

These ships shall bear aid and assistance to the wounded and wrecked belligerents, without distinction of nationality.

Ces navires porteront secours et assistance aux blessés et aux naufragés des belligérants sans distinction de nationalité.

They must take care not to interfere in any way with the movements of the combatants. During and after the battle they must do their duty at their own risk and peril.

Ils ne devront gêner en aucune manière les mouvements des combattants. Pendant et après le combat, ils agiront à leurs risques et périls.

Rights of belligerents to control and visit vessels, etc.

The belligerents shall have the right of controlling and visiting them; they will be at liberty to refuse their assistance, to order them to depart, and to detain them if the exigencies of the case require such a step.

Les belligérants auront sur eux le droit de contrôle et de visite; ils pourront refuser leur concours, leur enjoindre de s'éloigner et les détenir si la gravité des circonstances l'exigeait.

Wounded and wrecked picked up, etc., can not be reclaimed.

The wounded and wrecked picked up by these ships cannot be reclaimed by either of the com-

Les blessés et les naufragés recueillis par ces navires ne pourront être réclamés par aucun des batants, and they will be required not to serve during the continuance of the war.

Art. XIV. In naval wars any strong presumption that either belligerent takes advantage of the benefits of neutrality, with any other view than the interest of the sick and wounded, gives to the other belligerent, until proof to the contrary, the right of suspending the Convention, as regards such belligerent.

Should this presumption become a certainty, notice may be given to such belligerent that the Convention is suspended with regard to him during the whole continuance of the war.

Art. XV. The present act shall be drawn up in a single original copy, which shall be deposited in the Archives of the Swiss Confederation.

An authentic copy of this Act shall be delivered, with an invitation to adhere to it, to each of the signatory Powers of the Convention of the 22d of August, 1864, as well as to those that have successively acceded to it.

In faith whereof, the undersigned commissaries have drawn up the present project of additional articles and have apposed thereunto the seals of their arms.

[*Done at Geneva, the twentieth day of the month of October, of the year one thousand eight hundred and sixty-eight.*] [1]

von Rœder.
F. Lœffler.
Köhler.
Dr. Mundy.
Steiner.
Dr. Dompierre.
Visschers.
J. B. G. Galiffe.
A. Coupvent des Bois.
H. de Préval.

combattants, et il leur sera imposé de ne pas servir pendant la durée de la guerre.

Rights of belligerents to suspend convention, etc.

Art. XIV. Dans les guerres maritimes, toute forte présomption que l'un des belligérants profite du bénéfice de la neutralité dans un autre intérêt que celui des blessés et des malades, permet à l'autre belligérant, jusqu'à preuve du contraire, de suspendre la Convention à son égard.

Notice of suspension of Convention, etc. to be given.

Si cette présomption devient une certitude, la Convention peut même lui être dénoncée pour toute la durée de la guerre.

Act embodied in one original copy and deposited in archives of Swiss Confederation.

Art. XV. Le présent acte sera dressé en un seul exemplaire original qui sera déposé aux archives de la Confédération suisse.

Authentic copy to be delivered to signatory powers, etc.

Une copie authentique de cet acte sera délivrée, avec, l'invitation d'y adhérer, à chacune des Puissances signataires de la Convention du 22 août 1864, ainsi qu'à celles qui y ont successivement accédé.

En foi de quoi les Commissaires soussignés ont dressé le présent Projet d'articles additionnels et y ont apposé le cachet de leurs armes.

Seals of commissaries.

Fait à Genève le vingtième jour du mois d'octobre de l'an mil huit cent soixante-huit.[1]

von Rœder.
F. Lœffler.
Köhler.
Dr. Mundy.
Steiner.
Dr. Dompierre.
Visschers.
J. B. G. Galiffe.
A. Coupvent des Bois.
H. de Préval.

---

[1] The proclamation of the President of the United States promulgating the original treaty and the articles additional thereto bears date July 26, 1882 (22 Stat. L., 126).

John Saville Lumley.
H. R. Yelverton.
D. Felice Baroffio.
Paolo Cottrau.
H. A. van Karnebeek.
Westenberg.
F. N. Staaff.
D. H. Dufour.
G. Moynier.
Dr. S. Lehmann.
Husny.
Dr. C. Hahn.
Dr. Fichte.

John Saville Lumley.
H. R. Yelverton.
D. Felice Baroffio.
Paolo Cottrau.
H. A. van Karnebeek.
Westenberg.
F. N. Staaff.
G. H. Dufour.
G. Moynier.
Dr. S. Lehmann.
Husny.
Dr. C. Hahn.
Dr. Fichte.

AGREEMENT FOR THE ADAPTATION OF MARITIME WARFARE TO THE RULES OF THE GENEVA CONVENTION OF AUGUST 22, 1864.

Art. I. Military hospital ships—that is, ships constructed or fitted out by States especially and solely with a view to give assistance to the sick, wounded, and shipwrecked, the names of which shall have been communicated to the belligerent powers at the opening or during the continuance of hostilities, and in every case before being placed in service, are to be respected and may not be captured during the continuance of hostilities. These vessels are not assimilated to ships of war in matters pertaining to their sojourn in neutral ports.

Art. II. Hospital ships equipped wholly or in part at the expense of private individuals, or aid societies which have been officially recognized, are equally to be respected and exempted from capture, if the belligerent power to which they are attached has given them an official commission, and has notified their names to the adverse power at the opening of hostilities, or during their progress, but in every case before being placed in service. These ships shall carry a document from competent authority declaring that they have been subjected to its inspection during their equipment and at their final departure.

Art. III. Hospital ships equipped wholly or in part at the expense of private individuals, or societies officially recognized by neutral states, are to be respected and exempted from capture, if the neutral power to which they are subject issues commissions to them, and notifies their names to the belligerent powers at the outbreak of hostilities or during their continuance, but in all cases before being placed in service.

Art. IV. Ships mentioned in Articles I, II, and III shall carry aid and assistance to the sick, wounded, and shipwrecked individuals of the belligerent armies without distinction of nationality. The governments agree not to use these ships for any warlike purpose. These ships shall not embarrass in any manner the movements of the combatants. During and after the combat they shall act at their own risk and hazard. Belligerents shall have the right to visit and inspect them; they may refuse assistance to them, or require them to remove to a distance, or impose upon them a fixed sailing course, and may place a commissioner on board; they may even detain them if circumstances demand it. As far as possible orders given by belligerents to hospital ships shall be entered in their log books.

Art. V. Military hospital ships shall be distinguished by an exterior coloring of white with a green horizontal band of about one meter and a half in width. Ships mentioned in Articles II and III shall be distinguished by an exterior coloring of white with a red horizontal band of about one meter and a half in width. The small boats of the ships just mentioned, as well as the small boats which may be employed in hospital service, shall be distinguished by similar painting. All hospital ships shall be recognized by hoisting with their national flags the red cross emblazoned upon the white flag, as prescribed by the Geneva Convention.

Art. VI. Commercial vessels, yachts, or neutral small boats conveying or receiving sick, wounded, or shipwrecked persons are not liable to capture for engaging in such transport; but they remain liable to capture for any violations of neutrality which they may have committed.

Art. VII. The personnel of the medical and hospital service, including chaplains, of every captured vessel, is inviolable and can not be made prisoners of war. They carry away with them, on quitting the ship, the surgical instruments and appliances which are their personal property. These persons shall continue to perform their functions so long as may be necessary, and they may be withdrawn when the commander in chief deems such withdrawal possible. Belligerents are to secure to such persons who may fall into their hands the full enjoyment of their salaries.

Art. VIII. Persons in the military or naval service, to whatever nation they may belong, who are sick, wounded, or shipwrecked, shall be protected and cared for by their captors.

Art. IX. Sick, wounded, and shipwrecked persons in the service of a belligerent who fall into the hands of the enemy become prisoners of war. It is for the enemy to decide, according to the circumstances of the case, whether it is expedient to hold them, to send them to a port of their own nation, or to a neutral port, or even to a port of the enemy. In the last case the prisoners so returned to their country can not serve during the continuance of the war.

Art. X. Sick, wounded, or shipwrecked persons who are sent to a neutral port, with the consent of the local authority, shall, unless a contrary arrangement be entered into between the neutral state and the belligerents, be subjected to such restraint by the neutral state that it will be impossible for them to again take part in the operations of the war. The expenses of hospital treatment and internment of the sick, wounded, and shipwrecked shall be borne by the state to which they belong.

Art. XI. The rules contained in the foregoing article are obligatory only upon the contracting powers in the event of war between two or more of them. The said rules shall cease to be obligatory from the instant when, in a war between contracting powers, a noncontracting power joins one of the belligerents.

Art. XII. The present Convention shall be ratified with the briefest possible delay. The ratifications shall be deposited at The Hague; a minute shall be prepared, on the deposit of each ratification, of which a properly authenticated copy shall be transmitted, through diplomatic channels, to each of the contracting powers.

Art. XIII. Nonsignatory powers who have accepted the Geneva Convention of August 22, 1864, are permitted to adhere to this Convention. To that end they shall make known their adhesion to the contracting powers by a notification in writing, addressed to the Government of the Netherlands, and, communicated by it to all of the other contracting powers.

Art. XIV. If it should happen that one of the high contracting parties should disavow the present Convention, such disavowal shall not become operative until one year after it shall have been notified, in writing, to the Government of the Netherlands and immediately communicated by the latter to all of the other high contracting powers. This disavowal shall be operative only in respect to the power which shall have given notice of it.

Done at The Hague this 29th day of July, 1899.

THE AMERICAN NATIONAL RED CROSS.

Whereas on the twenty-second of August, eighteen hundred and sixty-four, at Geneva, Switzerland, plenipotentiaries respectively representing Italy, Baden, Belgium, Denmark, Spain, Portugal, France, Prussia, Saxony, and Wurtemburg, and the Federal Council of Switzerland agreed upon ten articles of a treaty or convention for the purpose of mitigating the evils inseparable from war; of suppressing the needless severity and ameliorating the condition of soldiers wounded on the field of battle; and particularly providing, among other things, in effect, that persons employed in hospitals, and in affording relief to the sick and wounded, and supplies for this purpose, shall be deemed neutral and entitled to protection; and that a distinctive and uniform flag shall be adopted for hospitals and ambulances, and convoys of sick and wounded, and an arm badge for individuals neutralized; and

Whereas said treaty has been ratified by all of said nations, and by others subsequently, to the number of forty-three or more, including the United States of America; and

Whereas a permanent organization is an agency needed in every nation to carry out the purposes of said treaty, and especially to secure supplies and to execute the humane objects contemplated by said treaty, with the power to adopt and use the distinctive flag and arm badge specified by said treaty in article seven, on which shall be the sign of the Red Cross, for the purpose of cooperating with the "Comité International de Secours aux Militaires Blessés" (International Committee of Relief for the Wounded in War); and

Whereas, in accordance with the requirements of customs of said international body, such an association, adopting and using said insignia, was formed in the city of Washington, District of Columbia, in July, eighteen hundred and eighty-one, known as "The American National Association of the Red Cross," and reincorporated April seventeenth, eighteen hundred and ninety-three, under the laws of the District of Columbia; and

Whereas it is believed that the importance of the work demands a reincorporation by the Congress of the United States: Now, therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Clara Barton, George Kennan, Julian B. Hubbell, of the District of Columbia; Stephen E. Barton, of New York; William R. Day, of Ohio; Brainard H. Warner, Ellen Spencer Mussey, Alvey A. Adee, of the District of Columbia; Joseph Sheldon, of Connecticut; Charles F. Fairchild, William Letchwerth, of New York City; Hilary A. Herbert, of Alabama; Joseph Gardner, Enola Lee Gardner, of Bedford, Indiana; John W. Noble, of Saint Louis, Missouri; Richard Olney, of Boston, Massachusetts; Alexander W. Terrell, of Austin, Texas; Leslie M. Shaw, Benjamin Tillinghast, of Iowa; Abraham C. Kaufman, of Charleston, South Carolina; J. B. Vinet, of New Orleans, Louisiana; George Gray, of Delaware; Redfield Proctor, of Vermont; George F. Hoar, of Massachusetts; Charles A. Russell, of Connecticut; Robert W. Miers, of Indiana; George C. Boldt, William T. Wardwell, of New York; Daniel Hastings, J. Wilkes O'Neill, of Pennsylvania; Thomas F. Walsh, of Colorado; John G. Lemmon, of California; Charles C. Glover, Walter S. Woodward, Elizabeth Kibbey, Mabel T. Boardman, Walter Wyman, Sumner I. Kimball, of the District of Columbia; Edward Lowe, of Michigan; Harriette L. Reed, of Boston, Massachusetts; William H. Sears, of Lawrence, Kansas; John K. Elwell, of Vinland, Kansas; E. R. Ridgely, of Pittsburg, Kansas; James Tanner, John Hitz, S. W. Briggs, Corry Curry, Lizzie W. Calver, Mary A. Logan, Mary L. Barton, S. B. Hege, and Helena H. Mitchell, of Washington, District of Columbia; Emma L. Nichols, of Chillicothe, Ohio; Lenora Halsted, of Saint Louis, Missouri; P. V. DeGraw, of Philadelphia, Pennsylvania; Walter V. Phillips, of Bridgeport, Connecticut, and their associates and successors, are hereby created a body corporate and politic in the District of Columbia.

SEC. 2. That the name of this corporation shall be "The American National Red Cross," and by that name it shall have perpetual succession, with the power to sue and be sued in courts of law and equity within the jurisdiction of the United States; to have and to hold such real and personal estate as shall be convenient and necessary to carry out the purposes of this corporation hereinafter set forth, such real estate to be limited to such quantity as may be necessary for official use or office buildings; to adopt a seal and the same to alter and destroy at pleasure; and to have the right to have and to use, in carrying out its purposes hereinafter designated, as an emblem and badge, a Greek red cross on a white ground, as the same has been described in the treaty of Geneva, August twenty-second, eighteen hundred and sixty-four, and adopted by the several nations acceding thereto; to ordain and establish bylaws and regulations not inconsistent with the laws of the United States of America or any State thereof, and generally to do all such acts and things as may be necessary to carry into effect the provisions of this Act and promote the purposes of said organization; and the corporation hereby created is designated as the organization which is authorized to act in matters of relief under said treaty. In accordance with article seven, of the treaty, the delivery of the brassard allowed for individuals neutralized in time of war shall be left to military authority.

SEC. 3. That the purposes of this corporation are and shall be—

First. To furnish volunteer aid to the sick and wounded of armies in time of war, in accordance with the spirit and conditions of the conference of Geneva of October, eighteen hundred and sixty-three, and also of the treaty of the Red Cross, or the treaty of Geneva of August twenty-second, eighteen hundred and sixty-four, to which the United States of America gave its adhesion on March first, eighteen hundred and eighty-two.

Second. And for said purposes to perform all the duties devolved upon a national society by each nation which has acceded to said treaty.

Third. To succeed to all the rights and property which have been hitherto held and to all the duties which have heretofore been performed by the American National Red Cross as a corporation duly organized and existing under the laws of the United States relating to the District of Columbia, which organization is hereby dissolved.

Fourth. To act in matters of voluntary relief and in accordance with the military and naval authorities as a medium of communication between the people of the United States of America and their armies, and to act in such matters between similar national societies of other governments through the "Comité International de Secours" and the Government and the people and the armies of the United States of America.

Fifth. And to continue and carry on a system of national and international relief in time of peace and apply the same in mitigating the sufferings caused by pestilence, famine, fire, floods, and other great national calamities.

Sixth. And to devise and carry on measures for preventing the same, and generally to promote measures of humanity and the welfare of mankind.

Sec. 4. That from and after the passage of this Act it shall be unlawful for any person within the jurisdiction of the United States to falsely and fraudulently hold himself out as, or represent or pretend himself to be a member of or an agent for the American National Red Cross for the purpose of soliciting, collecting, or recieving money or material; or for any person to wear or display the sign of the red cross, or any insignia colored in imitation thereof, for the fraudulent purpose of inducing the belief that he is a member of or an agent for the American National Red Cross. If any person violates the provisions of this section he shall be guilty of a misdemeanor, and shall be liable to a fine of not less than one nor more than five hundred dollars, or imprisonment for a term not exceeding one year, or both, for each and every offense. The fine so collected shall be paid to the American National Red Cross. The appointment of the chief medical officer shall not be made without the approval in writing of the Secretary of War.

Sec. 5. That the said American National Red Cross shall, on the first day of January of each year, make and transmit to Congress a full, complete, and itemized report of all receipts and expenditures of whatever kind, and of its proceedings during the preceding year, and shall also give such information concerning its transactions and affairs as the Secretary of State may from time to time require, and, in respect of all business and proceedings in which it may be concerned in conection with the War and Navy Departments of the Government, shall make reports to the Secretary of War and to the Secretary of the Navy, respectively.

Sec. 6. That Congress shall have the right to repeal, alter, or amend this Act at any time. *Act of June 6, 1900 (31 Stat. L., 277).*

THE ARMY REORGANIZATION ACT OF FEBRUARY 2, 1901.

THE ARMY OF THE UNITED STATES, COMPOSITION.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the approval of this Act the Army of the United States, including the existing organizations, shall consist of fifteen regiments of cavalry, a corps of artillery, thirty regiments of infantry, one Lieutenant-General, six major-generals, fifteen brigadier-generals, an Adjutant-General's Department, an Inspector-General's Department, a Judge-Advocate-General's Department, a Quartermaster's Department, a Subsistence Department, a Medical Department, a Pay Department, a Corps of Engineers, an Ordnance Department, a Signal Corps, the officers of the Record and Pension Office, the chaplains, the officers and enlisted men of the Army on the retired list, the professors, corps of cadets, the army detachments and band at the United States Military Academy, Indian scouts as now authorized by law, and such other officers and enlisted men as may hereinafter be provided for: *Provided*, That when a vacancy shall occur through death, retirement, or other separation from active service in the office of storekeeper, now provided for by law in the Quartermaster's Department and Ordnance Department, respectively, said office shall cease to exist. *Act of February 2, 1901 (31 Stat. L., 748).*

CAVALRY.

That each regiment of cavalry shall consist of one colonel, one lieutenant-colonel, three majors, fifteen captains, fifteen first lieutenants, and fifteen second lieutenants; two veterinarians, one sergeant-major, one quartermaster-sergeant, one commissary-sergeant, three squadron sergeants-major, two color-sergeants with rank, pay, and allowances of squadron sergeant-major, one band, and twelve troops organized into three squadrons of four troops each. Of the officers herein provided, the captains and lieutenants not required for duty with the troops shall be available for detail as regimental and squadron staff officers and such other details as may be authorized by law or regulations. Squadron adjutants shall receive one thousand eight hundred dollars per annum and the allowances of first lieutenants; squadron quartermasters and commissaries shall receive one thousand six hundred dollars per annum and the allowances of second lieutenants. Each cavalry band shall be organized as now provided by law. Each troop of cavalry shall consist of one captain, one first lieutenant, one second lieutenant, one first sergeant, one quartermaster-sergeant, six sergeants, six corporals, two cooks, two farriers and blacksmiths, one saddler, one wagoner, two trumpeters, and forty-three privates; the commissioned officers to be assigned from among those hereinbefore authorized: *Provided*, That the President, in his discretion, may increase the number of corporals in any troop of cavalry to eight, and the number of privates to seventy-six, but the total number of enlisted men authorized for the whole Army shall not at any time be exceeded. *Sec. 2*, *ibid.*

THE ARTILLERY CORPS.

That the regimental organization of the artillery arm of the United States Army is hereby discontinued, and that arm is constituted and designated as the Artillery Corps. It shall be organized as hereinafter specified and shall belong to the line of the Army. *Sec. 3*, *ibid.*

That the Artillery Corps shall comprise two branches—the coast artillery and the field artillery. The coast artillery is defined as that portion charged with the care and use of the fixed and movable elements of land and coast fortifications, including the submarine mine and torpedo defenses; and the field artillery as that portion accompanying an army in the field, and including field and light artillery proper, horse artillery, siege artillery, mountain artillery, and also machine-gun batteries: *Provided*, That this shall not be construed to limit the authority of the Secretary of War to order coast artillery to any duty which the public service demands or to prevent the use of machine or other field guns by any other arm of the service under the direction of the Secretary of War. *Sec. 4*, *ibid.*

That all officers of artillery shall be placed on one list, in respect to promotion, according to seniority in their several grades, and shall be assigned to coast or to field artillery according to their special aptitude for the respective services. *Sec. 5, ibid.*

That the Artillery Corps shall consist of a Chief of Artillery, who shall be selected and detailed by the President from the colonels of artillery, to serve on the staff of the general officer commanding the Army, and whose duties shall be prescribed by the Secretary of War; fourteen colonels, one of whom shall be the Chief of Artilley; thirteen lieutenant-colonels, thirty-nine majors, one hundred and ninety-five captains, one hundred and ninety-five first lieutenants, one hundred and ninety-five second lieutenants; and the captains and lieutenants provided for in this section not required for duty with batteries or companies shall be available for duty as staff officers of the various artillery garrisons and such other details as may be authorized by law and regulations; twenty-one sergeants-major, with the rank, pay, and allowances of regimental sergeants-major of infantry; twenty-seven sergeants-major, with the rank, pay, and allowances of battalion sergeants-major of infantry; one electrician sergeant to each coast artillery post having electrical appliances; thirty batteries of field artillery, one hundred and twenty-six batteries of coast artillery, and ten bands organized as now authorized by law for artillery regiments: *Provided*, That the aggregate number of enlisted men for the artillery, as provided under this Act, shall not exceed eighteen thousand nine hundred and twenty, exclusive of electrician sergeants. *Sec. 6, ibid.*

Twelve of the veterinarians herein provided for may be assigned to the artillery. *Act of March 3, 1901* (*31 Stat. L., 901*).

That each company of coast artillery shall be organized as is now prescribed by law for a battery of artillery: *Provided*, That the enlisted strength of any company may be fixed, under the direction of the Secretary of War, according to the requirements of the service to which it may be assigned: *And provided*, That first-class gunners shall receive two dollars a month, and second-class gunners one dollar per month in addition to their pay. *Sec. 7, act of February 2, 1901* (*31 Stat. L., 749*).

That each battery of field artillery shall be organized as is now prescribed by law, and the enlisted strength thereof shall be fixed under the direction of the Secretary of War. *Sec. 8, ibid.*

That the increase herein provided for the artillery shall be made as follows: Not less than twenty per centum before

July first, nineteen hundred and one, and not less than twenty per centum each succeeding twelve months until the total number provided for shall have been attained. All vacancies created or caused by this Act shall be filled by promotion according to seniority in the artillery arm. Second lieutenants of infantry or cavalry may, in the discretion of the President, be transferred to the artillery arm, taking rank therein according to date of commission, and such transfers shall be subject to approval by a board of artillery officers appointed to pass upon the capacity of such officers for artillery service: *Provided*, That the increase of officers of artillery shall be only in proportion to the increase of men. *Sec. 9*, *ibid.*

INFANTRY.

That each regiment of infantry shall consist of one colonel, one lieutenant-colonel, three majors, fifteen captains, fifteeen first lieutenants, and fifteen second lieutenants; one sergeant-major, one quartermaster-sergeant, one commissary-sergeant, three battalion sergeants-major, two color sergeants, with rank, pay, and allowances of battalion sergeants-major, one band, and twelve companies, organized into three battalions of four companies each. Of the officers herein provided, the captains and lieutenants not required for duty with the companies shall be available for detail as regimental and battalion staff officers and such other details as may be authorized by law or regulations. Battalion adjutants shall receive one thousand eight hundred dollars per annum and the allowances of first lieutenants, mounted; battalion quartermasters and commissaries shall receive one thousand six hundred dollars per annum and the allowances of second lieutenants, mounted. Each intantry band shall be organized as now provided by law. Each infantry company shall consist of one captain, one first lieutenant, one second lieutenant, one first sergeant, one quartermaster-sergeant, four sergeants, six corporals, two cooks, two musicians, one artificer, and forty-eight privates, the commissioned officers to be assigned from those hereinbefore authorized: *Provided*, That the President, in his discretion, may increase the number of sergeants in any company of infantry to six, the number of corporals to ten, and the number of privates to one hundred and twenty-seven, but the total number of enlisted men authorized for the whole Army shall not, at any time, be exceeded. *Sec. 10*, *ibid.*

ENGINEER TROOPS.

That the enlisted force of the Corps of Engineers shall consist of one band and three battalions of engineers. The engineers band shall be organized as now provided by law for bands of infantry regiments. Each battalion of engineers shall consist of one sergeant-major, one quartermaster-sergeant, and four companies. Each company of engineers shall consist of one first sergeant, one quartermaster-sergeant, with the rank, pay, and allowances of sergeant, eight sergeants, ten corporals, two musicians, two cooks, thirty-eight first-class and thirty-eight second-class privates: *Provided*, That the President may, in his discretion, increase the number of sergeants in any company of engineers to twelve, the number of corporals to eighteen, the number of first-class privates to sixty-four, and the number of second-class privates to sixty-four, but the total number of enlisted men authorized for the whole Army shall not, at any time, be exceeded: *And provided*, That officers detailed from the Corps of Engineers to serve as battalion adjutants and battalion quartermasters and commissaries shall, while so serving, receive the pay and allowances herein authorized for battalion staff officers of infantry regiments. *Sec. 11, ibid.*

CHAPLAINS.

That the President is authorized to appoint, by and with the advice and consent of the Senate, chaplains in the Army, at the rate of one for each regiment of cavalry and infantry in the United States service and twelve for the corps of artillery, with the rank, pay, and allowances of captains of infantry: *Provided*, That no person shall be appointed a chaplain in the Regular Army who shall have passed the age of forty years, nor until he shall have established his fitness as required by existing law: *And provided*, That the office of post chaplain is abolished, and the officers now holding commissions as chaplains, or who may hereafter be appointed chaplains, shall be assigned to regiments or to corps of artillery. Chaplains may be assigned to such stations as the Secretary of War shall direct, and they may be transferred, as chaplains, from one branch of the service or from one regiment to another by the Secretary of War, without further commission. When serving in the field, chaplains shall be furnished with necessary means of transportation by the Quartermaster's Department. *Sec. 12, ibid.*

THE ADJUTANT-GENERAL'S DEPARTMENT.

That the Adjutant-General's Department shall consist of one Adjutant-General with the rank of major-general, and when a vacancy shall occur in the office of Adjutant-General on the expiration of the service of the present incumbent, by retirement or otherwise, the Adjutant-General shall thereafter have the rank and pay of a brigadier-general, five assistant adjutants-general with the rank of colonel, seven assistant adjutants-general with the rank of lieutenant-colonel, and fifteen assistant adjutants-general with the rank of major: *Provided*, That all vacancies created or caused by this section shall, as far as possible, be filled by promotion according to seniority of officers of the Adjutant-General's Deparment. *Sec. 13, ibid.*

THE INSPECTOR-GENERAL'S DEPARTMENT.

That the Inspector-General's Department shall consist of one Inspector-General with the rank of brigadier-general, four inspectors-general with the rank of colonel, four inspectors-general with the rank of lieutenant-colonel, and eight inspectors-general with the rank of major: *Provided*, That all vacancies created or caused by this section shall be filled, as far as possible, by promotion according to seniority of officers of the Inspector-General's Department. *Sec. 14, ibid.*

Upon the occurrence of a vacancy in the grade of colonel in the Inspector-General's Department after the present lieutenant-colonels therein shall have been promoted or retired, such vacancy shall not be filled, and thereafter the number of officers authorized for that department shall be as follows: One inspector-general with the rank of brigadier-general; three inspectors-general with the rank of colonel; four inspectors-general with the rank of lieutenant-colonel, and nine inspectors-general with the rank of major. *Act of March 3, 1901 (31 Stat. L., 899).*

THE JUDGE-ADVOCATE-GENERAL'S DEPARTMENT.

That the Judge-Advocate-General's Department shall consist of one Judge-Advocate-General with the rank of brigadier-general, two judge-advocates with the rank of colonel, three judge-advocates with the rank of lieutenant-colonel, six judge-advocates with the rank of major, and for each geographical department or tactical division of troops not provided with a judge-advocate from the list of officers holding permanent commissions in the Judge-Advocate-General's Department one acting judge-advocate with the rank, pay, and allowances of captain, mounted. Promotions to vacancies above the grade of major, created or caused by this Act, shall be made, according to seniority, from officers now holding commission in the Judge-Advocate-General's Department. Vacancies created or caused by this Act in the grade of major may be filled by appointment of officers holding commissions as judge-advocate of volunteers since April twenty-first, eighteen hundred and ninety-eight. Vacancies which may occur thereafter in the grade of major in the Judge-Advocate-General's Department shall be filled by the appointment of officers of the line, or of persons who have satisfactorily served as judge-advocates of volunteers since April twenty-first, eighteen hundred and ninety-eight, or of persons from civil life who at date of appointment are not over thirty-five years of age and who shall pass a satisfactory examination to be prescribed by the Secretary of War.

Acting judge-advocates provided for herein shall be detailed from officers of the grades of captain or first lieutenant of the line of the Army who while so serving shall continue to hold their commissions in the arm of the service to which they permanently belong. Upon completion of a tour of duty not exceeding four years they shall be returned to the arm in which commissioned, and shall not be again detailed until they shall have completed two years' duty with the arm of the service in which commissioned. *Sec. 15, act of February 2, 1901 (31 Stat. L., 751).*

THE QUARTERMASTER'S DEPARTMENT.

That the Quartermaster's Department shall consist of one Quartermaster-General with the rank of brigadier-general, six assistant quartermasters-general with the rank of colonel, nine deputy quartermasters-general with the rank of lieutenant-colonel, twenty quartermasters with the rank of major, sixty quartermasters with the rank of captain, mounted; the military storekeeper now provided for by law, and one hundred and fifty post quartermaster-sergeants: *Provided*, That all vacancies in the grade of colonel, lieutenant-colonel, and major created or caused by this section shall be filled by promotion according to seniority, as now prescribed by law. That to fill original vacancies in the grade of captain created by this Act in the Quartermaster's Department the President is authorized to appoint officers of volunteers commissioned in the Quartermaster's Department since April twenty-first, eighteen hundred and ninety-eight: *Provided further*, That the President is authorized to continue in service, during the present emergency, for duty in the Philippine Islands and on transports, twenty-four captains and assistant quartermasters of volunteers. This authority shall extend only for the period when their services shall be absolutely necessary. *Sec. 16, ibid.*

THE SUBSISTENCE DEPARTMENT.

That the Subsistence Department shall consist of one Commissary-General with the rank of brigadier-general, three assistant commissaries-general with the rank of colonel, four deputy commissaries-general with the rank of lieutenant-colonel, nine commissaries with the rank of major, twenty-seven commissaries with the rank of captain, mounted, and the number of commissary-sergeants now authorized by law, who shall hereafter be known as post commissary-sergeants: *Provided*, That all vacancies in the grades of colonel, lieutenant-colonel, and major, created or caused by this section, shall be filled by promotion, according to seniority, as now prescribed by law. That to fill original vacancies in the grade of captain, created by this Act, in the Subsistence Department, the President is authorized to appoint officers of volunteers commissioned in the Subsistence Department since April twenty-first, eighteen hundred and ninety-eight. *Sec. 17, ibid.*

THE MEDICAL DEPARTMENT.

That the Medical Department shall consist of one Surgeon-General with the rank of brigadier-general, eight assistant surgeons-general with the rank of colonel, twelve deputy surgeons-general with the rank of lieutenant-colonel, sixty surgeons with the rank of major, two hundred and forty assistant surgeons with the rank of captain or first lieutenant. the Hospital Corps, as now authorized by law, and the Nurse Corps: *Provided*, That all vacancies in the grades of colonel, lieutenant-colonel, and major created or caused by this section shall be filled by promotion according to seniority, subject to the examination now prescribed by law: *And provided*, That the period during which any assistant surgeon shall have served as a surgeon or assistant surgeon in the Volunteer Army during the war with Spain or since shall be counted as a portion of the five years' service required to entitle him to rank of captain: *And provided also*, That nothing in this section shall affect the relative rank for promotion of any assistant surgeon now in the service, or who may be hereafter appointed therein, as determined by the date of his appointment or commission and as fixed in accordance with existing law and regulations: *Provided further*, That in emergencies the Surgeon-General of the Army, with the approval of the Secretary of War, may appoint as many contract surgeons as may be necessary, at a compensation not to exceed one hundred and fifty dollars per month. That on or after the passage of this Act the President may appoint for duty in the Philippine Islands, fifty surgeons of volunteers with the rank and pay of major, and one hundred and fifty assistant surgeons of volunteers with the rank and pay of captain, mounted, for a period of two years: *Provided*, That so many of these volunteer medical officers as are not required shall be honorably discharged the service whenever in the opinion of the Secretary of War their services are no longer necessary: *Provided further*, That assistant surgeons in the Volunteer Army of the United States commissioned by the President as captains, in accordance with the provisions of an Act for increasing the efficiency of the Army of the United States, and for other purposes, approved March second, eighteen hundred and ninety-nine, shall be entitled to the pay of a captain, mounted, from the date of their acceptance of such commission, as prescribed by law: *Provided*, That the Surgeon-General of the Army, with the approval of the Secretary of War, be, and he is hereby, authorized to employ dental surgeons to serve the officers and enlisted men of the Regular and Volunteer Army, in the proportion of not to exceed one for every one thousand of said Army, and not exceeding thirty in all. Said dental surgeons shall be employed as contract dental surgeons under the terms and conditions applicable to army contract surgeons, and shall be graduates of standard medical or dental colleges, trained in the several branches of dentistry, of good moral and professional character, and shall pass a satisfactory professional examination:

Provided, That three of the number of dental surgeons to be employed shall be first appointed by the Surgeon-General, with the approval of the Secretary of War, with reference to their fitness for assignment, under the direction of the Surgeon-General, to the special service of conducting the examinations and supervising the operations of the others; and for such special service an extra compensation of sixty dollars a month will be allowed: *Provided further*, That dental college graduates now employed in the Hospital Corps who have been detailed for a period of not less than twelve months to render dental service to the Army and who are shown by the reports of their superior officers to have rendered such service satisfactorily may be appointed contract dental surgeons without examination: *Provided*, That the Secretary of War be authorized to appoint in the Hospital Corps, in addition to the two hundred hospital stewards now allowed by law, one hundred hospital stewards: *Provided*, That men who have served as hospital stewards of volunteer regiments or acted in that capacity during and since the Spanish-American war for more than six months may be appointed hospital stewards in the Regular Army: *And provided further*, That all men so appointed shall be of good moral character and shall have passed a satisfactory mental and physical examination. *Sec. 18, ibid.*

THE NURSE CORPS (FEMALE).

That the Nurse Corps (female) shall consist of one Superintendent, to be appointed by the Secretary of War, who shall be a graduate of a hospital training school having a course of instruction of not less than two years, whose term of office may be terminated at his discretion, whose compensation shall be one thousand eight hundred dollars per annum, and of as many chief nurses, nurses, and reserve nurses as may be needed. Reserve nurses may be assigned to active duty when the emergency of the service demands, but shall receive no compensation except when on such duty: *Provided*, That all nurses in the Nurse Corps shall be appointed or removed by the Surgeon-General, with the approval of the Secretary of War; that they shall be graduates of hospital training schools, and shall have passed a satisfactory professional, moral, mental, and physical examination: *And provided*, That the Superintendent and nurses shall receive transportation and necessary expenses when traveling under orders; that the pay and allowances of nurses, and of reserve nurses, when on active service, shall be forty dollars per month when on duty in the United States and fifty dollars per month when without the limits of the United States. They shall be entitled to quarters, subsistence, and medical attendance during illness, and they may be granted leaves of absence for thirty days, with pay, for each calendar year; and, when serving as chief nurses, their pay may be increased by authority of the Secretary of War, such increase not to exceed twenty-five dollars per month. Payments to the Nurse Corps shall be made by the Pay Department. *Sec. 19, ibid.*

That the grade of veterinarian of the second class in cavalry regiments, United States Army, is hereby abolished, and hereafter the two veterinarians authorized for each cavalry regiment and the one veterinarian authorized for each artillery regiment[1] shall receive the pay and allowances of second lieutenants, mounted. Such number of veterinarians as the Secretary of War may authorize shall be employed to attend animals pertaining to the quartermaster's or other departments not directly connected with the cavalry and artillery regiments, at a compensation not exceeding one hundred dollars per month. *Sec. 20, ibid.*

THE PAY DEPARTMENT.

That the Pay Department shall consist of one Paymaster-General with the rank of brigadier-general, three assistant paymasters-general with the rank of colonel, four deputy paymasters-general with the rank of lieutenant-colonel, twenty paymasters with the rank of major, and twenty-five paymasters with the rank of captain, mounted: *Provided*, That all vacancies in the grade of colonel and lieutenant-colonel created or caused by this section shall be filled by promotion according to seniority, as now prescribed by law, and no more appointments to the grade of major and paymaster shall be made until the number of majors and paymasters is reduced below twenty: *And provided*, That persons who have served in the Volunteer Army since April twenty-first, eighteen hundred and ninety-eight, as additional paymasters may be appointed to positions in the grade of captain, created by this section.

---

[1] Replaced by a provision of the act of March 3, 1901 (31 Stat. L., 901), which authorizes twelve veterinarians for the Artillery Corps.

So long as there remain surplus majors an equal number of vacancies shall be held in the grade of captain, so that the total number of paymasters authorized by this section shall not be exceeded at any time. *Sec. 21, ibid.*

THE CORPS OF ENGINEERS.

That the Corps of Engineers shall consist of one Chief of Engineers with the rank of brigadier-general, seven colonels, fourteen lieutenant-colonels, twenty-eight majors, forty captains, forty first lieutenants, and thirty second lieutenants. The enlisted force provided in section eleven of this Act and the officers serving therewith shall constitute a part of the line of the Army: *Provided*, That the Chief of Engineers shall be selected as now provided by law, and hereafter vacancies in the Corps of Engineers in all other grades above that of second lieutenant shall be filled, as far as possible, by promotion according to seniority from the Corps of Engineers: *And provided also*, That vacancies remaining in the grades of first and second lieutenant may be filled by transfer of officers of the Regular Army, subject to such professional examination as may be approved by the Secretary of War. Vacancies in the grade of second lieutenant not filled by transfer shall be left for future promotions from the corps of cadets at the United States Military Academy. *Sec. 22, ibid.*

THE ORDNANCE DEPARTMENT.

That the Ordnance Department shall consist of one Chief of Ordnance with the rank of brigadier-general, four colonels, six lieutenant-colonels, twelve majors, twenty-four captains, and twenty-four first lieutenants, the ordnance storekeeper, and the enlisted men, including ordnance sergeants, as now authorized by law. All vacancies created or caused by this section shall, as far as possible, be filled by promotion according to seniority as now prescribed by law. *Sec. 23, ibid.*

THE SIGNAL CORPS.

That the Signal Corps shall consist of one Chief Signal Officer with the rank of brigadier-general, one colonel, one lieutenant-colonel, four majors, fourteen captains, fourteen first lieutenants, eighty first-class sergeants, one hundred and twenty sergeants, one hundred and fifty corporals, two hundred and fifty first-class privates, one hundred and fifty second-class privates, and ten cooks: *Provided*, That vacancies created or caused by this section shall be filled by promotion of officers of the Signal Corps according to seniority, as now provided by law. Vacancies remaining after such promotions may be filled by appointment of persons who have served in the Volunteer Signal Corps since April twenty-first, eighteen hundred and ninety-eight: *Provided*, That the President is authorized to continue in service during the present emergency, for duty in the Philippine Islands, five volunteer signal officers with the rank of first lieutenant and five volunteer signal officers with the rank of second lieutenant. This authority shall extend only for the period when their services may be absolutely necessary. *Sec. 24, ibid.*

THE RECORD AND PENSION OFFICE.

That the officers of the Record and Pension Office of the War Department shall be a chief of said office with the rank of brigadier-general and an assistant chief of said office with the rank of major: *Provided*, That any person appointed to be Chief of the Record and Pension Office after the passage of this Act shall have the rank of colonel. *Sec. 25, ibid.*

PROMOTIONS AND DETAILS.

That so long as there remain any officers holding permanent appointments in the Adjutant-General's Department, the Inspector-General's Department, the Quartermaster's Department, the Subsistence Department, the Pay Department, the Ordnance Department, and the Signal Corps, including those appointed to original vacancies in the grades of captain and first lieutenant under the provisions of sections sixteen, seventeen, twenty-one, and twenty-four of this Act, they shall be promoted according to seniority in the several grades, as now provided by law, and nothing herein contained shall be deemed to apply to vacancies which can be filled by such promotions or to the periods for which the officers so promoted shall hold their appointments, and when any vacancy, except that of the chief of the department or corps, shall occur, which can not be filled by promotion as provided in this section, it shall be filled by detail from the line of the Army, and no more permanent appointments shall be made in those departments or corps after the original vacancies created by this Act shall have been filled. Such details shall be made from the grade in which the vacancies exist, under such system of examination as the President may from time to time prescribe.

All officers so detailed shall serve for a period of four years, at the expiration of which time they shall return to duty with the line, and officers below the rank of lieutenant-colonel shall not again be eligible for selection in any staff department until they shall have served two years with the line.

That when vacancies shall occur in the position of chief of any staff corps or department the President may appoint to such vacancies, by and with the advice and consent of the Senate, officers of the Army at large not below the rank of lieutenant-colonel, and who shall hold office for terms of four years. When a vacancy in the position of chief of any staff corps or department is filled by the appointment of an officer below the rank now provided by law for said office, said chief shall, while so serving, have the same rank, pay, and allowances now provided for the chief of such corps or department. And any officer now holding office in any corps or department who shall hereafter serve as chief of a staff corps or department and shall subsequently be retired, shall be retired with the rank, pay, and allowances authorized by law for the retirement of such corps or department chief: *Provided*, That so long as there remain in service officers of any staff corps or department holding permanent appointments, the chief of such staff corps or department shall be selected from the officers so remaining therein. *Sec. 26*, *ibid.*

That each position vacated by officers of the line, transferred to any department of the staff for tours of service under this Act, shall be filled by promotion in the line until the total number detailed equals the number authorized for duty in each staff department. Thereafter vacancies caused by details from the line to the staff shall be filled by officers returning from tours of staff duty. If under the operation of this Act the number of officers returned to any particular arm of the service at any time exceeds the number authorized by law in any grade, promotions to that grade shall cease until the number has been reduced to that authorized. *Sec. 27*, *ibid.*

Appointments to fill original vacancies in the lowest grade in the Adjutant-General's Department, the Inspector-General's Department, and Judge Advocate-General's

Department, and in the grade of captain in the Quartermaster's Department, Subsistence Department, and Pay Department may be made from officers of volunteers commissioned since April twenty-first, eighteen hundred and ninety-eight, and the age limit prescribed as to chaplains shall not apply to persons who served as chaplains of volunteers after said date who were under forty-two years of age when originally appointed. *Act of March 3, 1901 (31 Stat. L., 900).*

That vacancies in the grade of field officers and captain, created by this Act, in the cavalry, artillery, and infantry shall be filled by promotion according to seniority in each branch, respectively. Vacancies existing after the promotions have been made shall be provided for as follows: A sufficient number shall be reserved in the grade of second lieutenant for the next graduating class at the United States Military Academy.

Persons not over forty years of age who shall have at any time served as volunteers subsequent to April twenty-first, eighteen hundred and ninety-eight, may be ordered before boards of officers for such examination as may be prescribed by the Secretary of War, and those who establish their fitness before these examining boards may be appointed to the grades of first or second lieutenant in the Regular Army, taking rank in the respective grades according to seniority as determined by length of prior commissioned service; but no person appointed under the provisions of this section shall be placed above another in the same grade with longer commissioned service, and nothing herein contained shall change the relative rank of officers heretofore commissioned in the Regular Army.

Enlisted men of the Regular Army or volunteers may be appointed second lieutenants in the Regular Army to vacancies created by this act, provided that they shall have served one year, under the same conditions now authorized by law for enlisted men of the Regular Army. *Sec. 28, act of February 2, 1901 (31 Stat. L., 755).*

ENLISTMENTS.

That to fill vacancies occurring from time to time in the several organizations serving without the limits of the United States with trained men, the President is authorized to enlist recruits in numbers equal to four per centum in excess of the total strength authorized for such organizations. *Sec. 29, ibid.*

That the President is authorized to maintain the enlisted force of the several organizations of the Army at their maximum strength as fixed by this act during the present exigencies of the service, or until such time as Congress may hereafter otherwise direct: *Provided*, That in the event of the enlistment of a soldier in the Army for the period required by law, and after the expiration of one year of service, should either of his parents die, leaving the other solely dependent upon the soldier for support, such soldier may, upon his own application, be honorably discharged from the service of the United States upon due proof being made of such condition to the Secretary of War. *Sec. 30*, *ibid.*

That the Secretary of War is authorized to detach from the Army at large such number of enlisted men as may be necessary to perform duty at the various recruiting stations, and while performing such duty one member of each party shall have the rank, pay, and allowances of sergeant, and one the rank, pay, and allowances of corporal of the arm of the service to which they respectively belong. *Sec. 31*, *ibid.*

That when the exigencies of the service of any officer who would be entitled to promotion upon examination require him to remain absent from any place where an examining board could be convened, the President is hereby authorized to promote such officer, subject to examination, and the examination shall take place as soon thereafter as practicable. If upon examination the officer be found disqualified for promotion, he shall, upon the approval of the proceedings by the Secretary of War, be treated in the same manner as if he had been examined prior to promotion. *Sec. 32*, *ibid.*

The President of the United States is hereby authorized to select from the brigadier-generals of volunteers two volunteer officers, without regard to age, and, by and with the advice and consent of the Senate, appoint them brigadier-generals, United States Army, for the purpose of placing them on the retired list.

And the President is also hereby authorized to select from the retired list of the Army an officer not above the rank of brigadier-general who may have distinguished himself during the war with Spain, in command of a separate army, and to appoint, by and with the advice and consent of the Senate, the officer so selected to be major-general, United States Army, with the pay and allowances established by law for officers of that grade on the retired list. *Sec. 33, ibid.*

That all officers who have served during the war with Spain, or since, as officers of the Regular or Volunteer Army of the United States, and have been honorably discharged from the service by resignation or otherwise, shall be entitled to bear the official title, and, upon occasions of ceremony, to wear the uniform of the highest grade they have held by brevet or other commission in the regular or volunteer service. *Sec. 34, ibid.*

That the Secretary of War be, and he is hereby, authorized and directed to cause preliminary examinations and surveys to be made for the purpose of selecting four sites with a view to the establishment of permanent camp grounds for instruction of troops of the Regular Army and National Guard, with estimates of the cost of the sites and their equipment with all modern appliances, and for this purpose is authorized to detail such officers of the Army as may be necessary to carry on the preliminary work; and the sum of ten thousand dollars is hereby appropriated for the necessary expense of such work, to be disbursed under the direction of the Secretary of War: *Provided,* That the Secretary of War shall report to Congress the result of such examination and surveys, and no contract for said sites shall be made nor any obligation incurred until Congress shall approve such selections and appropriate the money therefor. *Sec. 35, ibid.*

That when in his opinion the conditions in the Philippine Islands justify such action the President is authorized to enlist natives of those islands for service in the Army, to be organized as scouts, with such officers as he shall deem necessary for their proper control, or as troops or companies, as authorized by this act, for the Regular Army. The President is further authorized, in his discretion, to form companies, organized as are companies of the Regular Army, in squadrons or battalions, with officers and noncommissioned officers corresponding to similar organizations in the cavalry and infantry arms. The total number of enlisted men in said native organizations shall not exceed twelve thousand, and the total enlisted force of the line of the Army, together with such native force, shall not exceed at any one time one hundred thousand.

The majors to command the squadrons and battalions shall be selected by the President from captains of the line of the Regular Army, and while so serving they shall have the rank, pay, and allowances of the grade of major. The captains of the troops or companies shall be selected by the President from first lieutenants of the line of the Regular Army, and while so serving they shall have the rank, pay, and allowances of captain of the arm to which assigned. The squadron and battalion staff officers, and first and second lieutenants of companies, may be selected from the noncommissioned officers or enlisted men of the Regular Army of not less than two years' service, or from officers or noncommissioned officers or enlisted men serving, or who have served, in the volunteers subsequent to April twenty-first, eighteen hundred and ninety-eight, and officers of those grades shall be given provisional appointments for periods of four years each, and no such appointments shall be continued for a second or subsequent term unless the officer's conduct shall have been satisfactory in every respect. The pay and allowances of provisional officers of native organizations shall be those authorized for officers of like grades in the Regular Army. The pay, rations, and clothing allowances to be authorized for the enlisted men shall be fixed by the Secretary of War, and shall not exceed those authorized for the Regular Army.

When, in the opinion of the President, natives of the Philippine Islands shall, by their services and character, show fitness for command, the President is authorized to make provisional appointments to the grades of second and first lieutenants from such natives, who, when so appointed, shall have the pay and allowances to be fixed by the Secretary of War, not exceeding those of corresponding grades of the Regular Army. *Sec. 36, ibid.*

That the President is authorized to organize and maintain one provisional regiment of not exceeding three battalions of infantry, for service in Porto Rico, the enlisted strength thereof to be composed of natives of that island as far as practicable. The regiment shall be organized as to numbers as authorized for infantry regiments of the Regular Army. The pay, rations, and clothing allowances to be authorized for the enlisted men shall be fixed by the Secretary of War, and shall not exceed those authorized for the Regular Army. The field officers shall be selected from officers of the next lower grades in the Regular Army and shall, while so serving in the higher grade, have the rank, pay, and allowances thereof. The company and regimental and battalion staff officers shall be appointed by the President. The President may, in his discretion, continue with their own consent the volunteer officers and enlisted men of the Porto Rico regiment, whose terms of service expire by law July first, nineteen hundred and one. Enlistments for the Porto Rico regiment shall be made for periods of three years, unless sooner discharged. The regiment shall be continued in service until further directed by Congress. *Sec. 37, ibid.*

The sale of or dealing in beer, wine or any intoxicating liquors by any person in any post exchange or canteen or army transport or upon any premises used for military purposes by the United States, is hereby prohibited. The Secretary of War is hereby directed to carry the provisions of this section into full force and effect. *Sec. 38, ibid.*

That nothing in this Act shall be held or construed so as to discharge any officer from the Regular Army or to deprive him of the commission which he now holds therein. *Sec. 39, ibid.*

That the President be, and he is hereby, authorized to prescribe the kinds and quantities of the component articles of the army ration, and to direct the issue of substitutive equivalent articles in place of any such components whenever, in his opinion, economy and a due regard to the health and comfort of the troops may so require. *Sec. 40, ibid.*

That the distinctive badges adopted by military societies of men "who served in the armies and navies of the United States during the Spanish-American war and the incident insurrection in the Philippines" may be worn upon all occasions of ceremony by officers and men of the Army and Navy of the United States who are members of said organizations in their own right. *Sec. 41, ibid.*

That all laws and parts of laws inconsistent with the provisions of this act be, and the same are hereby, repealed. *Sec. 42, ibid.*

MAXIMUM PUNISHMENT CODE.

GENERAL ORDERS, No. 42.

HEADQUARTERS OF THE ARMY,
ADJUTANT-GENERAL'S OFFICE,
Washington, March 26, 1901.

By direction of the Secretary of War, the following Executive order is published for the information and guidance of all concerned:

EXECUTIVE MANSION, *March 12, 1901.*

The Executive order, dated March 30, 1898, establishing limits of punishment for enlisted men of the Army, under an act of Congress approved September 27, 1890, and which was published in General Orders, No. 16, 1898, Headquarters of the Army, is amended so as to prescribe as follows:

ARTICLE I.

In all cases of desertion the sentence may include dishonorable discharge[1] and forfeiture of pay and allowances.

Subject to the modifications authorized in section 3 of this article, the limit of the term of confinement (at hard labor) for desertion shall be as follows:

SECTION 1. In case of surrender—

(a) When the deserter surrenders himself after an absence of not more than thirty days, one year.

(b) When the surrender is made after an absence of more than thirty days, eighteen months.

---

[1] In a case where, because of previous convictions, the punishment may, under General Orders, No. 42, of 1901, be dishonorable discharge, the department commander may properly require the charges to be brought to trial before a general court-martial, notwithstanding that, if the alternative punishment of dishonorable discharge be not resorted to, the punishment would be within the power of an inferior court. Dig. Opin., J. A. G., par. 1647.

An offense covered by General Orders, No. 42, of 1901, is cognizable by inferior court-martial whenever the limit prescribed in the order may, by substitution of punishment under the provisions of the order, be brought within the punishing power of inferior courts as defined by the eighty-third Article of War. Ibid., par. 1648.

The term "day" or "days," when used in General Orders, No. 42, of 1901, has reference to a day of twenty-four hours. Ibid., par. 1649.

A sentence of a summary court forfeited one month's pay in a case where, under General Orders, No. 42, of 1901, the maximum legal forfeiture was ten dollars. *Held*, that the sentence was void as to the forfeiture in excess of the limit, and *advised* that the amount collected in excess of such limit be refunded to the soldier. Ibid., par. 1650.

It is now held by the War Department that when a sentence of confinement or forfeiture exceeds the prescribed limit, the part within the limit is legal and may be approved and carried into execution. (*a*) Ibid., par. 1651.

---

[a] See paragraph 2, Circ. 12, A. G. O., 1892.

SEC. 2. In case of apprehension—

(a) When at the time of desertion the deserter shall not have been more than six months in the service, eighteen months.

(b) When he shall have been more than six months in the service, two and one-half years.

SEC. 3. The foregoing limitations are subject to modifications under the following conditions:

(a) The punishment of a deserter may be increased by one year of confinement at hard labor in consideration of each previous conviction of desertion.

(b) The punishment for desertion when joined in by two or more soldiers in the execution of a conspiracy, or for desertion in the presence of an outbreak of Indians or of any unlawful assemblage which the troops may be opposing, shall not exceed dishonorable discharge, forfeiture of all pay and allowances, and confinement at hard labor for five years.

ARTICLE II.

Except as herein otherwise indicated, punishments shall not exceed the limits prescribed in the following table:

Offenses.	Limits of punishment.
UNDER 17TH ARTICLE OF WAR.	
Selling horse or arms, or both	Dishonorable discharge, forfeiture of all pay and allowances, and confinement at hard labor for three years.
Selling accouterments	Four months' confinement at hard labor and forfeiture of $10 per month for the same period; for noncommissioned officer, reduction in addition thereto.
Selling clothing	Two months' confinement at hard labor and forfeiture of $10 per month for the same period; for noncommissioned officer, reduction in addition thereto.
Losing or spoiling horse or arms through neglect.	Four months' confinement at hard labor and forfeiture of $10 per month for the same period; for noncommissioned officer, reduction in addition thereto.
Losing or spoiling accouterments or clothing through neglect.	Twenty days' confinement at hard labor and forfeiture of $6; for noncommissioned officer, reduction in addition thereto.
UNDER 20TH ARTICLE OF WAR.	
Behaving himself with disrespect to his commanding officer.	Six months' confinement at hard labor and forfeiture of $10 per month for the same period; for noncommissioned officer, reduction in addition thereto.
UNDER 24TH ARTICLE OF WAR.	
Refusal to obey or using violence to officer or noncommissioned officer while quelling quarrels or disorders.	Dishonorable discharge, with forfeiture of all pay and allowances, and confinement at hard labor for two years.
UNDER 32D ARTICLE OF WAR.	
Absence without leave (*a*)—	
One hour or less	Forfeiture of $1; corporal, $2; sergeant, $3; first sergeant or noncommissioned officer of higher grade, $4.
For more than one to six hours, inclusive.	Forfeiture of $2; corporal, $3; sergeant, $4; first sergeant or noncommissioned officer of higher grade, $5.
For more than six to twelve hours, inclusive.	Forfeiture of $3; corporal, $4; sergeant, $6; first sergeant or noncommissioned officer of higher grade, $7.
For more than twelve to twenty-four hours, inclusive.	Forfeiture of $5; corporal, $6; sergeant, $7; first sergeant or noncommissioned officer of higher grade, $10.

[a] Upon trial for desertion and conviction of absence without leave only, the court may, in addition to the limit prescribed for such absence, award a stoppage of the amount paid for apprehension and for transportation of himself and guard.

Offenses.	Limits of punishment.
UNDER 32D ARTICLE OF WAR—Cont'd.	
Absence without leave (*a*)—	
For more than twenty-four to forty-eight hours, inclusive.	Forfeiture of $6 and five days' confinement at hard labor. For corporal, forfeiture of $8; sergeant, $10; first-sergeant or noncommissioned officer of higher grade, $12; or, for all noncommissioned officers, reduction.
For more than two to ten days, inclusive.	Forfeiture of $10 and ten days' confinement at hard labor; for noncommissioned officer, reduction in addition thereto.
For more than ten to thirty days, inclusive.	Forfeiture of $30 and one month's confinement at hard labor; for noncommissioned officer, reduction in addition thereto.
For more than thirty to ninety days, inclusive.	Three months' confinement at hard labor and forfeiture of $10 per month for same period; for noncommissioned officer, reduction in addition thereto.
For more than ninety days	Dishonorable discharge and forfeiture of all pay and allowances and six months' confinement at hard labor.
UNDER 33D ARTICLE OF WAR.	
Failure to repair at the time fixed, to the place appointed, etc.—	
For reveille or retreat roll call and 11 p. m. inspection.	Forfeiture of $1; corporal, $2; sergeant, $3; first sergeant, $4.
For assembly of guard detail	Forfeiture of $5; corporal, $8; sergeant, $10.
For guard mounting (by musician detailed for guard).	
For guard mounting (by musician not detailed for guard).	Forfeiture of $2; corporal, $3; sergeant, $5.
For assembly of fatigue detail	
For dress parade	
For inspection and muster, weekly or monthly inspection.	
For target practice	
For drill	
For stable duty	
For athletic exercises	
UNDER 38TH ARTICLE OF WAR.	
Found drunk—	
On guard	Six months' confinement at hard labor and forfeiture of $10 per month for the same period; for noncommissioned officer, reduction in addition thereto.
On duty as head cook	Forfeiture of $20.
On extra or special duty	Forfeiture of $12; for noncommissioned officer, reduction and forfeiture of $20.
At formation of company for drill or on drill.	
At target practice	
At formation of company for dress parade or on dress parade.	
At reveille or retreat roll call.	
At inspection and muster, weekly or monthly inspection.	
At inspection of company guard detail or at guard mounting.	
At stable duty	
On fatigue	
UNDER 40TH ARTICLE OF WAR.	
Quitting guard	Six months' confinement at hard labor and forfeiture of $10 per month for the same period; for noncommissioned officer, reduction in addition thereto.
UNDER 51ST ARTICLE OF WAR.	
Persuading soldiers to desert	Dishonorable discharge, forfeiture of all pay and allowances, and one year's confinement at hard labor.
UNDER 60TH ARTICLE OF WAR	Dishonorable discharge, forfeiture of all pay and allowances, and four years' confinement at hard labor.
UNDER 62D ARTICLE OF WAR.	
Manslaughter	Dishonorable discharge, forfeiture of all pay and allowances, and ten years' confinement at hard labor.
Assault with intent to kill	Dishonorable discharge, forfeiture of all pay and allowances, and ten years' confinement at hard labor.
Burglary	Dishonorable discharge, forfeiture of all pay and allowances, and five years' confinement at hard labor.
Forgery	Dishonorable discharge, forfeiture of all pay and allowances, and four years' confinement at hard labor.

[a] Upon trial for desertion and conviction of absence without leave only, the court may, in addition to the limit prescribed for such absence, award a stoppage of the amount paid for apprehension and for transportation of himself and guard.

Offenses.	Limits of punishment.
UNDER 62D ARTICLE OF WAR—Continued.	
Perjury	Dishonorable discharge, forfeiture of all pay and allowances, and four years' confinement at hard labor.
False swearing	Dishonorable discharge, forfeiture of all pay and allowances, and two years' confinement at hard labor.
Robbery	Dishonorable discharge, forfeiture of all pay and allowances, and six years' confinement at hard labor.
Larceny or embezzlement of property(*a*)—	
Of the value of more than $100	Dishonorable discharge, forfeiture of all pay and allowances and four years' confinement at hard labor.
Of the value of $100 or less, and more than $50.	Dishonorable discharge, forfeiture of all pay and allowances, and three years' confinement at hard labor.
Of the value of $50 or less, and more than $20.	Dishonorable discharge, forfeiture of all pay and allowances, and two years' confinement at hard labor.
Of the value of $20 or less	Dishonorable discharge, forfeiture of all pay and allowances, and one year's confinement at hard labor.
Fraudulent enlistment, procured by false representation or concealment of a fact in regard to a prior enlistment or discharge, or in regard to conviction of a civil or military crime.	Dishonorable discharge, forfeiture of all pay and allowances, and confinement at hard labor for one year.
Fraudulent enlistment, other cases of	Dishonorable discharge, forfeiture of all pay and allowances, and confinement at hard labor for six months.
Disobedience of orders, involving willful defiance of the authority of a noncommissioned officer in the execution of his office.	Six months' confinement at hard labor and forfeiture of $10 per month for the same period; for noncommissioned officer, reduction in addition thereto.
Using threatening or insulting language or behaving in an insubordinate manner to a noncommissioned officer while in the execution of his office.	One months' confinement at hard labor and forfeiture of $10; for noncommissioned officer, reduction in addition thereto.
Absence from fatigue duty	Forfeiture of $4; corporal, $5; sergeant, $6.
Absence from extra or special duty	Forfeiture of $4; corporal, $5; sergeant, $6.
Absence from duty as company, general mess, or hospital head cook.	Forfeiture of $10.
Introducing liquor into post, camp, or quarters in violation of standing orders.	Forfeiture of $3; for noncommissioned officer, reduction and forfeiture of $5.
Drunkenness at post or in quarters	Forfeiture of $3; for noncommissioned officer, reduction and forfeiture of $5.
Drunkenness and disorderly conduct, causing the offender's arrest and conviction by civil authorities at a place within ten miles of his station.	Forfeiture of $10 and seven days' confinement at hard labor; for noncommissioned officer, reduction and forfeiture of $12.
Noisy or disorderly conduct in quarters.	Forfeiture of $4; corporal, $7; sergeant, $10.
Drunk and disorderly in post or quarters.	Forfeiture of $7; for noncommissioned officer, reduction and forfeiture of $10.
Abuse by noncommissioned officer of his authority over an inferior.	Reduction, three months' confinement at hard labor, and forfeiture of $10 per month for the same period.
Noncommissioned officer encouraging gambling.	Reduction and forfeiture of $5.
Noncommissioned officer making false report.	Reduction, forfeiture of $8, and ten days' confinement at hard labor.
Sentinel allowing a prisoner under his charge to escape through neglect.	Six months' confinement at hard labor and forfeiture of $10 per month for the same period.
Sentinel willfully suffering prisoner under his charge to escape.	Dishonorable discharge, forfeiture of all pay and allowances, and one years' confinement at hard labor.
Sentinel allowing a prisoner under his charge to obtain liquor.	Two months' confinement at hard labor and forfeiture of $10 per month for the same period.
Sentinel or member of guard drinking liquor with prisoners.	Two months' confinement at hard labor and forfeiture of $10 per month for the same period.
Disrespect or affront to a sentinel	Two months' confinement at hard labor and forfeiture of $10 per month for the same period; for noncommissioned officer, reduction in addition thereto.
Resisting or disobeying sentinel in lawful execution of his duty.	Six months' confinement at hard labor and forfeiture of $10 per month for the same period; for noncommissioned officer, reduction in addition thereto.
Lewd or indecent exposure of person	Three months' confinement at hard labor and forfeiture of $10 per month for the same period; for noncommissioned officer, reduction in addition thereto.
Commiting nuisance in or about quarters.	
Breach of arrest in quarters.	One months' confinement at hard labor and forfeiture of $10; for noncommissioned officer, reduction in addition thereto.

---

a In specifications to charges of larceny or embezzlement the value of the property shall be stated.

ARTICLE III.

The introduction and use of evidence of previous convictions is subject to the following regulations:

1. Such evidence shall be limited to previous convictions by courts-martial of an offense or offenses within one year preceding the arraignment and during the current enlistment. These convictions must be proved by the records of previous trials and convictions, or by duly authenticated copies of such records, or by duly authenticated copies of the orders promulgating such trials and convictions. Charges forwarded to the authority competent to order a general court-martial, or submitted to a summary, garrison, or regimental court-martial, must be accompanied by the proper evidence of previous convictions.

2. Whenever a soldier is convicted of an offense for which a discretionary punishment is authorized, the court will receive evidence of previous convictions, if there be any. General, regimental, and garrison courts-martial will, after a finding of guilty, be opened for the purpose of ascertaining whether there is such evidence and, if so, of receiving it.

3. *Previous convictions in connection with inferior court offenses.*—When a soldier is convicted of an offense the punishment for which under Article II of this order or the custom of the service does not exceed one month's confinement at hard labor and forfeiture of one month's pay, the punishment so authorized may, upon proof of four or less previous convictions within the prescribed period, be increased one-half for each of such previous convictions; provided that upon proof of five or more such previous convictions, the limit of punishment shall be dishonorable discharge, forfeiture of all pay and allowances, and confinement at hard labor for three months.

4. *Previous convictions in connection with general court-martial offenses.*—When the conviction is for an offense punishable under Article II of this order or the custom of the service with a greater punishment than one month's confinement at hard labor and forfeiture of one month's pay, such punishment, if it includes dishonorable discharge, shall not be increased by reason of previous convictions, but evidence thereof, whatever their number within the prescribed period, will be submitted to the court to aid it in determining upon the proper measure of punishment, subject to the limit already authorized.

If the authorized punishment under Article II of this order or the custom of the service exceeds one month's confinement at hard labor and forfeiture of one month's pay and does not include dishonorable discharge such punishment shall not be increased on account of previous convictions if less than five are considered, but if there be five or more, the court may adjudge dishonorable discharge and forfeiture of all pay and allowances with the authorized confinement, and when this confinement is less than three months it may be increased to three months.[1]

5. On a conviction of desertion evidence of convictions of previous desertions may also be introduced, irrespective of the period which may have elapsed since such conviction or convictions.

6. When a noncommissioned officer is convicted of an offense not punishable with reduction, he may, upon proof of one previous conviction within the prescribed period, be sentenced to reduction in addition to the punishment already authorized.

7. First-class privates may be reduced to second-class privates in all cases where for like offenses on the part of noncommissioned officers their reduction in grade is now authorized.

Article IV.

When a soldier shall, on one arraignment, be convicted of two or more offenses, none of which is punishable under Article II of this order or the custom of the service with dishonorable discharge, but the aggregate term of confinement for which may exceed six months, dishonorable discharge with forfeiture of pay and allowances may be awarded in addition to the authorized confinement.[2]

Article V.

If, in any case where the limit of punishment is dishonorable discharge, forfeiture of all pay and allowances, and confinement at hard labor for a stated number of months, dishonorable discharge be not adjudged, the limit of forfeiture shall be all pay due and to become due during the prescribed limit of confinement.

---

[1] By the third subdivision of Article III of the Executive Order of March 30, 1898 (G. O. 16, A. G. O., 1898), it is provided that in consideration of previous convictions the limit of punishment shall be "dishonorable discharge, forfeiture of all pay and allowances, and confinement at hard labor for three months." Such a sentence means, so far as the forfeiture is concerned, forfeiture of pay and allowances due at the date of the discharge. A court-martial when it has the power to award this sentence may award a lesser one, but in doing so can not award confinement and forfeiture greater in amount than confinement for three months and forfeiture of pay and allowances due, or its equivalent under the rule of substitution authorized in the order.(*a*) Dig. Opin. J. A. G., par. 1653.

[2] The term "authorized confinement" as used in Article IV of General Order No. 16 of 1895 (now Article IV, General Order No. 16 of 1898), is not limited to the maximum authorized. Confinement for a period less than the maximum is also authorized confinement. The article means that when the maximum term may be more than six months, dishonorable discharge with forfeiture of pay and allowances may be awarded with whatever confinement, within the prescribed limit, the court may adjudge. *Held* also that such "authorized confinement" is limited to the specific confinement authorized by Article II, or if not provided for therein, by the custom of the service; that is to say, such confinement may not be increased by substitution of confinement for forfeiture, or on account of previous convictions, the same not being provided for by the terms of Article IV. Ibid., par. 1652.

(*a*) But see Article V, *post*.

ARTICLE VI.

This order prescribes the *maximum* limit of punishment for the offenses named, and this limit is intended for those cases in which the severest punishment should be awarded. In other cases the punishment should be graded down according to the extenuating circumstances. Offenses not herein provided for remain punishable as authorized by the Articles of War and the custom of the service.

ARTICLE VII.

Summary courts are subject to the restrictions named in the Eighty-third Article of War. Soldiers against whom charges may be preferred for trial by summary court shall not be confined in the guardhouse, but shall be placed in arrest in quarters, before and during trial and while awaiting sentence, except when in particular cases restraint may be necessary.

ARTICLE VIII.

Substitutions for punishment named in Article II of this order are authorized at the discretion of the courts at the following rates:

Two days' confinement at hard labor for one dollar forfeiture; or the reverse; one day's solitary confinement on bread and water diet for two days' confinement at hard labor or for one dollar forfeiture; provided that a noncommissioned officer not sentenced to reduction shall not be subject to confinement; and provided that solitary confinement shall not exceed fourteen days at one time, nor be repeated until fourteen days have elapsed, and shall not exceed eighty-four days in one year.[1]

ARTICLE IX.

Noncommissioned officers above the rank of corporal shall not, if they object thereto, be brought to trial before regimental, garrison, or summary courts-martial without the authority of the officer competent to order their trial by general court-martial; nor shall sergeants of the post noncommissioned staff or hospital stewards be reduced, but they may be dishonorably discharged whenever reduction is included in the limit of punishment.

WILLIAM MCKINLEY.

By command of Lieutenant-General Miles:

H. C. CORBIN,
Adjutant-General, Major-General U. S. Army.

---

[1] The order prescribing maximum punishments also provides for certain substitutions of punishment. The purpose of these provisions is not only to determine the measure, but also the kind of punishment which should be considered authorized so far as the offenses specified in the order are concerned. Thus where the prescribed limit is forfeiture and confinement a reprimand in lieu thereof can not legally be adjudged. Dig. Opin. J. A. G., par. 1654.

INSTRUCTIONS FOR THE GOVERNMENT OF ARMIES OF THE UNITED STATES IN THE FIELD.

General Orders, No. 100.

War Department,
Adjutant-General's Office,
Washington, April 24, 1863.

The following "Instructions for the government of armies of the United States in the field," prepared by Francis Lieber, LL. D., and revised by a board of officers, of which Maj. Gen. E. A. Hitchcock is president, having been approved by the President of the United States, he commands that they be published for the information of all concerned.

By order of the Secretary of War:

E. D. Townsend,
Assistant Adjutant-General.

* * * * * * *

Section I.

MARTIAL LAW—MILITARY JURISDICTION—MILITARY NECESSITY—RETALIATION.

1. A place, district, or country occupied by an enemy stands, in consequence of the occupation, under the martial law of the invading or occupying army, whether any proclamation declaring martial law or any public warning to the inhabitants has been issued or not. Martial law is the immediate and direct effect and consequence of occupation or conquest.

The presence of a hostile army proclaims its martial law.

2. Martial law does not cease during the hostile occupation, except by special proclamation ordered by the commander-in-chief, or by special mention in the treaty of peace concluding the war, when the occupation of a place or territory continues beyond the conclusion of peace as one of the conditions of the same.

3. Martial law in a hostile country consists in the suspension, by the occupying military authority, of the criminal and civil law, and of the domestic administration and government in the occupied place or territory, and in the substitution of military rule and force for the same, as well as in the dictation of general laws, as far as military necessity requires this suspension, substitution, or dictation.

The commander of the forces may proclaim that the administration of all civil and penal law shall continue either wholly or in part, as in times of peace, unless otherwise ordered by the military authority.

4. Martial law is simple military authority exercised in accordance with the laws and usages of war. Military oppression is not martial law; it is the abuse of the power which the law confers. As martial law is executed by military force, it is incumbent upon those who administer it to be strictly guided by the principles of justice, honor, and humanity—virtues adorning a soldier even more than other men, for the very reason that he possesses the power of his arms against the unarmed.

5. Martial law should be less stringent in places and countries fully occupied and fairly conquered. Much greater severity may be exercised in places or regions where actual hostilities exist, or are expected and must be prepared for. Its most complete sway is allowed—even in the commander's own country—when face to face with the enemy, because of the absolute necessities of the case, and of the paramount duty to defend the country against invasion.

To save the country is paramount to all other considerations.

6. All civil and penal law shall continue to take its usual course in the enemy's places and territories under martial law, unless interrupted or stopped by order of the occupying military power; but all the functions of the hostile government—legislative, executive, or administrative— whether of a general, provincial, or local character, cease under martial law, or continue only with the sanction, or, if deemed necessary, the participation of the occupier or invader.

7. Martial law extends to property and to persons, whether they are subjects of the enemy or aliens to that government.

8. Consuls, among Americans and European nations, are not diplomatic agents. Nevertheless, their offices and persons will be subjected to martial law in cases of urgent necessity only; their property and business are not exempted. Any delinquency they commit against the established military rule may be punished as in the case of any other inhabitant, and such punishment furnishes no reasonable ground for international complaint.

9. The functions of ambassadors, ministers, or other diplomatic agents accredited by neutral powers to the hostile government cease, so far as regards the displaced government; but the conquering or occupying power usually recognizes them as temporarily accredited to itself.

10. Martial law affects chiefly the police and collection of public revenue and taxes, whether imposed by the expelled government or by the invader, and refers mainly to the support and efficiency of the army, its safety, and the safety of its operations.

11. The law of war does not only disclaim all cruelty and bad faith concerning engagements concluded with the enemy during the war, but

also the breaking of stipulations solemnly contracted by the belligerents in time of peace, and avowedly intended to remain in force in the case of war between the contracting powers.

It disclaims all extortions and other transactions for individual gain; all acts of private revenge, or connivance at such acts.

Offenses to the contrary shall be severely punished, and especially so if committed by officers.

12. Whenever feasible, martial law is carried out in cases of individual offenders by military courts; but sentences of death shall be executed only with the approval of the Chief Executive, provided the urgency of the case does not require a speedier execution, and then only with the approval of the chief commander.

13. Military jurisdiction is of two kinds: First, that which is conferred and defined by statute; second, that which is derived from the common law of war. Military offenses under the statute law must be tried in the manner therein directed; but military offenses which do not come within the statute must be tried and punished under the common law of war. The character of the courts which exercise these jurisdictions depends upon the local laws of each particular country.

In the armies of the United States the first is exercised by courts-martial, while cases which do not come within the Rules and Articles of War, or the jurisdiction conferred by statute or courts-martial, are tried by military commissions.

14. Military necessity, as understood by modern civilized nations, consists in the necessity of those measures which are indispensable for securing the ends of the war, and which are lawful according to the modern law and usages of war.

15. Military necessity admits of all direct destruction of life or limb of *armed* enemies, and of other persons whose destruction is incidentally *unavoidable* in the armed contests of the war; it allows of the capturing of every armed enemy and every enemy of importance to the hostile government or of peculiar danger to the captor; it allows of all destruction of property and obstruction of the ways and channels of traffic, travel, or communication, and of all withholding of sustenance or means of life from the enemy; of the appropriation of whatever an enemy's country affords necessary for the subsistence and safety of the army, and of such deception as does not involve the breaking of good faith, either positively pledged, regarding agreements entered into during the war, or supposed by the modern law of war to exist. Men who take up arms against one another in public war do not cease on this account to be moral beings, responsible to one another and to God.

16. Military necessity does not admit of cruelty—that is, the infliction of suffering for the sake of suffering or for revenge, nor of maiming or wounding except in fight, nor of torture to extort con-

fessions. It does not admit of the use of poison in any way, nor of the wanton devastation of a district. It admits of deception, but disclaims acts of perfidy; and, in general, military necessity does not include any act of hostility which makes the return to peace unnecessarily difficult.

17. War is not carried on by arms alone. It is lawful to starve the hostile belligerent, armed or unarmed, so that it leads to the speedier subjection of the enemy.

18. When a commander of a besieged place expels the noncombatants, in order to lessen the number of those who consume his stock of provisions, it is lawful, though an extreme measure, to drive them back, so as to hasten on the surrender.

19. Commanders, whenever admissible, inform the enemy of their intention to bombard a place, so that the noncombatants, and especially the women and children, may be removed before the bombardment commences. But it is no infraction of the common law of war to omit thus to inform the enemy. Surprise may be a necessity.

20. Public war is a state of armed hostility between sovereign nations or governments. It is a law and requisite of civilized existence that men live in political, continuous societies, forming organized units, called states or nations, whose constituents bear, enjoy, and suffer, advance and retrograde together in peace and in war.

21. The citizen or native of a hostile country is thus an enemy, as one of the constituents of the hostile state or nation, and as such is subjected to the hardships of the war.

22. Nevertheless, as civilization has advanced during the last centuries, so has likewise steadily advanced, especially in war on land, the distinction between the private individual belonging to a hostile country and the hostile country itself, with its men in arms. The principle has been more and more acknowledged that the unarmed citizen is to be spared in person, property, and honor as much as the exigencies of war will admit.

23. Private citizens are no longer murdered, enslaved, or carried off to distant parts, and the inoffensive individual is as little disturbed in his private relations as the commander of the hostile troops can afford to grant in the overruling demands of a vigorous war.

24. The almost universal rule in remote times was, and continues to be with barbarous armies, that the private individual of the hostile country is destined to suffer every privation of liberty and protection and every disruption of family ties. Protection was, and still is with uncivilized people, the exception.

25. In modern regular wars of the Europeans, and their descendants in other portions of the globe, protection of the inoffensive citizen of the hostile country is the rule; privation and disturbance of private relations are the exceptions.

26. Commanding generals may cause the magistrate and civil officers of the hostile country to take the oath of temporary allegiance or an oath of fidelity to their own victorious government or rulers, and they may expel every one who declines to do so. But whether they do so or not, the people and their civil officers owe strict obedience to them as long as they hold sway over the district or country, at the peril of their lives.

27. The law of war can no more wholly dispense with retaliation than can the law of nations, of which it is a branch. Yet civilized nations acknowledge retaliation as the sternest feature of war. A reckless enemy often leaves to his opponent no other means of securing himself against the repetition of barbarous outrage.

28. Retaliation will, therefore, never be resorted to as a measure of mere revenge, but only as a means of protective retribution, and, moreover, cautiously and unavoidably; that is to say, retaliation shall only be resorted to after careful inquiry into the real occurrence and the character of the misdeeds that may demand retribution.

Unjust or inconsiderate retaliation removes the belligerents further and further from the mitigating rules of regular war, and by rapid steps leads them nearer to the internecine wars of savages.

29. Modern times are distinguished from earlier ages by the existence, at one and the same time, of many nations and great governments related to one another in close intercourse.

Peace is their normal condition; war is the exception. The ultimate object of all modern war is a renewed state of peace.

The more vigorously wars are pursued, the better it is for humanity. Sharp wars are brief.

30. Ever since the formation and coexistence of modern nations, and ever since wars have become great national wars, war has come to be acknowledged not to be its own end, but the means to obtain great ends of state, or to consist in defense against wrong; and no conventional restrictions of the modes adopted to injure the enemy is any longer admitted; but the law of war imposes many limitations and restrictions on principles of justice, faith, and honor.

SECTION II.

PUBLIC AND PRIVATE PROPERTY OF THE ENEMY—PROTECTION OF PERSONS, AND ESPECIALLY OF WOMEN; OF RELIGION, THE ARTS, AND SCIENCES—PUNISHMENT OF CRIME AGAINST THE INHABITANTS OF HOSTILE COUNTRIES.

31. A victorious army appropriates all public money, seizes all public movable property until further direction by its government, and sequesters for its own benefit or that of its government all the revenues of real property belonging to the hostile government or

nation. The title to such real property remains in abeyance during military occupation and until the conquest is made complete.

32. A victorious army, by the martial power inherent in the same, may suspend, change, or abolish, as far as the marshal power extends, the relations which arise from the services due, according to the existing laws of the invaded country, from one citizen, subject, or native of the same to another.

The commander of the army must leave it to the ultimate treaty of peace to settle the permanency of this change.

33. It is no longer considered lawful—on the contrary, it is held to be a serious breach of the law of war—to force the subjects of the enemy into the service of the victorious government, except the latter should proclaim, after a fair and complete conquest of the hostile country or district, that it is resolved to keep the country, district, or place permanently as its own and make it a portion of its own country.

34. As a general rule the property belonging to churches, to hospitals, or other establishments of an exclusively charitable character, to establishments of education, or foundations for the promotion of knowledge, whether public schools, universities, academies of learning, or observatories, museums of the fine arts, or of a scientific character—such property is not to be considered public property in the sense of paragraph 31, but it may be taxed or used when the public service may require it.

35. Classical works of art, libraries, scientific collections, or precious instruments, such as astronomical telescopes, as well as hospitals, must be secured against all avoidable injury, even when they are contained in fortified places whilst besieged or bombarded.

36. If such works of art, libraries, collections, or instruments belonging to a hostile nation or government can be removed without injury, the ruler of the conquering state or nation may order them to be seized and removed for the benefit of the said nation. The ultimate ownership is to be settled by the ensuing treaty of peace.

In no case shall they be sold or given away if captured by the armies of the United States, nor shall they ever be privately appropriated or wantonly destroyed or injured.

37. The United States acknowledge and protect, in hostile countries occupied by them, religion and morality, strictly private property, the persons of the inhabitants, especially those of women, and the sacredness of domestic relations. Offenses to the contrary shall be rigorously punished.

This rule does not interfere with the right of the victorious invader to tax the people or their property, to levy forced loans, to billet soldiers, or to appropriate property, especially houses, lands, boats or ships, and churches, for temporary and military uses.

38. Private property, unless forfeited by crimes or by offenses of

the owner, can be seized only by way of military necessity for the support or other benefit of the Army or of the United States.

If the owner has not fled, the commanding officer will cause receipts to be given, which may serve the spoliated owner to obtain indemnity.

39. The salaries of civil officers of the hostile government who remain in the invaded territory, and continue the work of their office, and can continue it according to the circumstances arising out of the war—such as judges, administrative or police officers, officers of city or communal governments—are paid from the public revenue of the invaded territory until the military government has reason wholly or partially to discontinue it. Salaries or incomes connected with purely honorary titles are always stopped.

40. There exists no law or body of authoritative rules of action between hostile armies, except that branch of the law of nature and nations which is called the law and usages of war on land.

41. All municipal law of the ground on which the armies stand, or of the countries to which they belong, is silent and of no effect between armies in the field.

42. Slavery, complicating and confounding the ideas of property (that is, of a *thing*) and of personality (that is, of *humanity*), exists according to municipal or local law only. The law of nature and nations has never acknowledged it. The digest of the Roman law enacts the early dictum of a pagan jurist, that, "so far as the law of nature is concerned, all men are equal." Fugitives escaping from a country in which they were slaves, villains, or serfs, into another country, have, for centuries past, been held free and acknowledged free by judicial decisions of European countries, even though the municipal law of the country in which the slave had taken refuge acknowledged slavery within its own dominions.

43. Therefore, in a war between the United States and a belligerent which admits of slavery, if a person held in bondage by that belligerent be captured by or come as a fugitive under the protection of the military forces of the United States, such person is immediately entitled to the rights and privileges of a freeman. To return such person into slavery would amount to enslaving a free person, and neither the United States nor any officer under their authority can enslave any human being. Moreover, a person so made free by the law of war is under the shield of the law of nations, and the former owner or State can have, by the law of postliminy, no belligerent lien or claim of service.

44. All wanton violence committed against persons in the invaded country, all destruction of property not commanded by the authorized officer, all robbery or pillage or sacking, even after taking a place by main force, all rape, wounding, maiming, or killing of such inhabitants, are prohibited under the penalty of death, or such other severe punishment as may seem adequate for the gravity of the offense.

A soldier, officer or private, in the act of committing such violence, and disobeying a superior ordering him to abstain from it, may be lawfully killed on the spot by such superior.

45. All captures and booty belong, according to the modern law of war, primarily to the government of the captor.

Prize money, whether on sea or land, can now only be claimed under local law.

46. Neither officers nor soldiers are allowed to make use of their position or power in the hostile country for private gain, not even for commercial transactions otherwise legitimate. Offenses to the contrary committed by commissioned officers will be punished with cashiering or such other punishment as the nature of the offense may require; if by soldiers, they shall be punished according to the nature of the offense.

47. Crimes punishable by all penal codes, such as arson, murder, maiming, assaults, highway robbery, theft, burglary, fraud, forgery, and rape, if committed by an American soldier in a hostile country against its inhabitants, are not only punishable as at home, but in all cases in which death is not inflicted the severer punishment shall be preferred.

SECTION III.

DESERTERS—PRISONERS OF WAR—HOSTAGES—BOOTY ON THE BATTLE-FIELD.

48. Deserters from the American Army, having entered the service of the enemy, suffer death if they fall again into the hands of the United States, whether by capture or being delivered up to the American Army; and if a deserter from the enemy, having taken service in the Army of the United States, is captured by the enemy, and punished by them with death or otherwise, it is not a breach against the law and usages of war requiring redress or retaliation.

49. A prisoner of war is a public enemy armed or attached to the hostile army for active aid, who has fallen into the hands of the captor, either fighting or wounded, on the field or in the hospital, by individual surrender or by capitulation.

All soldiers, of whatever species of arms; all men who belong to the rising *en masse* of the hostile country; all those who are attached to the army for its efficiency and promote directly the object of the war, except such as are hereinafter provided for; all disabled men or officers on the field or elsewhere, if captured; all enemies who have thrown away their arms and ask for quarter, are prisoners of war, and as such exposed to the inconveniences as well as entitled to the privileges of a prisoner of war.

50. Moreover, citizens who accompany an army for whatever pur

pose, such as sutlers, editors, or reporters of journals, or contractors, if captured, may be made prisoners of war, and be detained as such.

The monarch and members of the hostile reigning family, male or female, the chief, and chief officers of the hostile government, its diplomatic agents, and all persons who are of particular and singular use and benefit to the hostile army or its government, are, if captured on belligerent ground, and if unprovided with a safe conduct granted by the captor's government, prisoners of war.

51. If the people of that portion of an invaded country which is not yet occupied by the enemy, or of the whole country, at the approach of a hostile army, rise, under a duly authorized levy, *en masse* to resist the invader, they are now treated as public enemies, and, if captured, are prisoners of war.

52. No belligerent has the right to declare that he will treat every captured man in arms of a levy *en masse* as a brigand or bandit.

If, however, the people of a country, or any portion of the same, already occupied by an army rise against it, they are violators of the laws of war, and are not entitled to their protection.

53. The enemy's chaplains, officers of the medical staff, apothecaries, hospital nurses, and servants, if they fall into the hands of the American Army, are not prisoners of war unless the commander has reasons to retain them. In this latter case, or if, at their own desire, they are allowed to remain with their captured companions, they are treated as prisoners of war, and may be exchanged if the commander sees fit.

54. A hostage is a person accepted as a pledge for the fulfillment of an agreement concluded between belligerents during the war, or in consequence of a war. Hostages are rare in the present age.

55. If a hostage is accepted, he is treated like a prisoner of war, according to rank and condition, as circumstances may admit.

56. A prisoner of war is subject to no punishment for being a public enemy, nor is any revenge wreaked upon him by the intentional infliction of any suffering, or disgrace, by cruel imprisonment, want of food, by mutilation, death, or any other barbarity.

57. So soon as a man is armed by a sovereign government and takes the soldier's oath of fidelity he is a belligerent; his killing, wounding, or other warlike acts are no individual crimes or offenses. No belligerent has a right to declare that enemies of a certain class, color, or condition, when properly organized as solders, will not be treated by him as public enemies.

58. The law of nations knows of no distinction of color, and if an enemy of the United States should enslave and sell any captured persons of their Army, it would be a case for the severest retaliation, if not redressed upon complaint.

The United States can not retaliate by enslavement; therefore death must be the retaliation for this crime against the law of nations.

59. A prisoner of war remains answerable for his crimes committed against the captor's army or people, committed before he was captured, and for which he has not been punished by his own authorities.

All prisoners of war are liable to the infliction of retaliatory measures.

60. It is against the usage of modern war to resolve, in hatred and revenge, to give no quarter. No body of troops has the right to declare that it will not give, and therefore will not expect, quarter; but a commander is permitted to direct his troops to give no quarter, in great straits, when his own salvation makes it *impossible* to cumber himself with prisoners.

61. Troops that give no quarter have no right to kill enemies already disabled on the ground or prisoners captured by other troops.

62. All troops of the enemy known or discovered to give no quarter in general, or to any portion of the army, receive none.

63. Troops who fight in the uniform of their enemies, without any plain, striking, and uniform mark of distinction of their own, can expect no quarter.

64. If American troops capture a train containing uniforms of the enemy, and the commander considers it advisable to distribute them for use among his men, some striking mark or sign must be adopted to distinguish the American soldier from the enemy.

65. The use of the enemy's national standard, flag, or other emblem of nationality for the purpose of deceiving the enemy in battle is an act of perfidy by which they lose all claim to the protection of the laws of war.

66. Quarter having been given to an enemy by American troops under a misapprehension of his true character, he may, nevertheless, be ordered to suffer death if within three days after the battle it be discovered that he belongs to a corps which gives no quarter.

67. The law of nations allows every sovereign government to make war upon another sovereign state, and therefore admits of no rules or laws different from those of regular warfare regarding the treatment of prisoners of war, although they may belong to the army of a government which the captor may consider as a wanton and unjust assailant.

68. Modern wars are not internecine wars, in which the killing of the enemy is the object. The destruction of the enemy in modern war, and, indeed, modern war itself, are means to obtain that object of the belligerent which lies beyond the war.

Unnecessary or revengeful destruction of life is not lawful.

69. Outposts, sentinels, or pickets are not to be fired upon, except to drive them in or when a positive order, special or general, has been issued to that effect.

70. The use of poison in any manner, be it to poison wells or food or arms, is wholly excluded from modern warfare. He that uses it puts himself out of the pale of the law and usages of war.

71. Whoever intentionally inflicts additional wounds on an enemy already wholly disabled or kills such an enemy, or who orders or encourages soldiers to do so, shall suffer death, if duly convicted, whether he belongs to the Army of the United States or is an enemy captured after having committed his misdeed.

72. Money and other valuables on the person of a prisoner, such as watches or jewelry, as well as extra clothing, are regarded by the American Army as the private property of the prisoner, and the appropriation of such valuables or money is considered dishonorable, and is prohibited.

Nevertheless, if *large* sums are found upon the persons of prisoners or in their possession they shall be taken from them, and the surplus, after providing for their own support, appropriated for the use of the Army, under the direction of the commander, unless otherwise ordered by the Government. Nor can prisoners claim as private property large sums found and captured in their train, although they have been placed in the private luggage of the prisoners.

73. All officers, when captured, must surrender their side arms to the captor. They may be restored to the prisoner in marked cases, by the commander, to signalize admiration of his distinguished bravery or approbation of his humane treatment of prisoners before his capture. The captured officer to whom they may be restored can not wear them during captivity.

74. A prisoner of war, being a public enemy, is the prisoner of the government and not of the captor. No ransom can be paid by a prisoner of war to his individual captor or to any officer in command. The government alone releases captives, according to rules prescribed by itself.

75. Prisoners of war are subject to confinement or imprisonment, such as may be deemed necessary on account of safety, but they are to be subjected to no other intentional suffering or indignity. The confinement and mode of treating a prisoner may be varied during his captivity according to the demands of safety.

76. Prisoners of war shall be fed upon plain and wholesome food, whenever practicable, and treated with humanity.

They may be required to work for the benefit of the captor's government, according to their rank and condition.

77. A prisoner of war who escapes may be shot or otherwise killed in his flight, but neither death nor any other punishment shall be inflicted upon him simply for his attempt to escape, which the law of war does not consider a crime. Stricter means of security shall be used after an unsuccessful attempt at escape.

If, however, a conspiracy is discovered, the purpose of which is a united or general escape, the conspirators may be rigorously punished, even with death; and capital punishment may also be inflicted upon prisoners of war discovered to have plotted rebellion against the authorities of the captors, whether in union with fellow-prisoners or other persons.

78. If prisoners of war, having given no pledge nor made any promise on their honor, forcibly or otherwise escape, and are captured again in battle, after having rejoined their own army, they shall not be punished for their escape, but shall be treated simply as prisoners of war, although they will be subjected to stricter confinement.

79. Every captured wounded enemy shall be medically treated, according to the ability of the medical staff.

80. Honorable men, when captured, will abstain from giving to the enemy information concerning their own army, and the modern law of war permits no longer the use of any violence against prisoners in order to extort the desired information, or to punish them for having given false information.

SECTION IV.

PARTISANS—ARMED ENEMIES NOT BELONGING TO THE HOSTILE ARMY—SCOUTS—ARMED PROWLERS—WAR REBELS.

81. Partisans are soldiers armed and wearing the uniform of their army, but belonging to a corps which acts detached from the main body for the purpose of making inroads into the territory occupied by the enemy. If captured, they are entitled to all the privileges of the prisoner of war.

82. Men, or squads of men, who commit hostilities, whether by fighting or inroads for destruction or plunder, or by raids of any kind, without commission, without being part and portion of the organized hostile army, and without sharing continuously in the war, but who do so with intermitting returns to their homes and avocations, or with the occasional assumption of the semblance of peaceful pursuits, divesting themselves of the character or appearance of soldiers—such men, or squads of men, are not public enemies, and therefore, if captured, are not entitled to the privileges of prisoners of war, but shall be treated summarily as highway robbers or pirates.

83. Scouts or single soldiers, if disguised in the dress of the country, or in the uniform of the army hostile to their own, employed in obtaining information, if found within or lurking about the lines of the captor, are treated as spies, and suffer death.

84. Armed prowlers, by whatever names they may be called, or persons of the enemy's territory, who steal within the lines of the hostile army for the purpose of robbing, killing, or of destroying bridges, roads, or canals, or of robbing or destroying the mail, or of cutting the telegraph wires, are not entitled to the privileges of the prisoner of war.

85. War rebels are persons within an occupied territory who rise in arms against the occupying or conquering army, or against the authorities established by the same. If captured, they may suffer death, whether they rise singly, in small or large bands, and whether called upon to do so by their own, but expelled, government or not. They are not prisoners of war; nor are they, if discovered and secured before their conspiracy has matured to an actual rising, or to armed violence.

SECTION V.

SAFE CONDUCT—SPIES—WAR TRAITORS—CAPTURED MESSENGERS—ABUSE OF THE FLAG OF TRUCE.

86. All intercourse between the territories occupied by belligerent armies, whether by traffic, by letter, by travel, or in any other way, ceases. This is the general rule. to be observed without special proclamation.

Exceptions to this rule, whether by safe conduct, or permission to trade on a small or large scale, or by exchanging mails, or by travel from one territory into the other, can take place only according to agreement approved by the government or by the highest military authority.

Contraventions of this rule are highly punishable.

87. Ambassadors, and all other diplomatic agents of neutral powers, accredited to the enemy, may receive safe conducts through the territories occupied by the belligerents, unless there are military reasons to the contrary, and unless they may reach the place of their destination conveniently by another route. It implies no international affront if the safe conduct is declined. Such passes are usually given by the supreme authority of the State, and not by subordinate officers.

88. A spy is a person who secretly, in disguise or under false pretense, seeks information with the intention of communicating it to the enemy.

The spy is punishable with death by hanging by the neck, whether or not he succeed in obtaining the information or in conveying it to the enemy.

89. If a citizen of the United States obtains information in a legitimate manner, and betrays it to the enemy, be he a military or civil officer or a private citizen, he shall suffer death.

90. A traitor under the law of war, or a war traitor, is a person in a place or district under martial law who, unauthorized by the military commander, gives information of any kind to the enemy or holds intercourse with him.

91. The war traitor is always severely punished. If his offense consists in betraying to the enemy anything concerning the condition, safety, operations, or plans of the troops holding or occupying the place or district, his punishment is death.

92. If the citizen or subject of a country or place invaded or conquered gives information to his own government, from which he is separated by the hostile army, or to the army of his government, he is a war traitor, and death is the penalty of his offense.

93. All armies in the field stand in need of guides, and impress them if they can not obtain them otherwise.

94. No person having been forced by the enemy to serve as guide is punishable for having done so.

95. If a citizen of a hostile and invaded district voluntarily serves as a guide to the enemy, or offers to do so, he is deemed a war traitor, and shall suffer death.

96. A citizen serving voluntarily as a guide against his own country commits treason, and will be dealt with according to the law of his country.

97. Guides, when it is clearly proved that they have misled intentionally, may be put to death.

98. All unauthorized or secret communication with the enemy is considered treasonable by the law of war.

Foreign residents in an invaded or occupied territory, or foreign visitors in the same, can claim no immunity from this law. They may communicate with foreign parts, or with the inhabitants of the hostile country, so far as the military authorities permit, but no further. Instant expulsion from the occupied territory would be the very least punishment for the infraction of this rule.

99. A messenger carrying written dispatches or verbal messages from one portion of the army, or from a besieged place, to another portion of the same army or its government, if armed and in the uniform of his army, and if captured while doing so in the territory occupied by the enemy, is treated by the captor as a prisoner of war. If not in uniform, nor a soldier, the circumstances connected with his capture must determine the disposition that shall be made of him.

100. A messenger or agent who attempts to steal through the territory occupied by the enemy to further, in any manner, the interests of the enemy, if captured is not entitled to the privileges of the prisoner of war, and may be dealt with according to the circumstances of the case.

101. While deception in war is admitted as a just and necessary means of hostility, and is consistent with honorable warfare, the common law of war allows even capital punishment for clandestine or treacherous attempts to injure an enemy, because they are so dangerous and it is so difficult to guard against them.

102. The law of war, like the criminal law regarding other offenses, makes no difference on account of the difference of sex, concerning the spy, the war traitor, or the war rebel.

103. Spies, war traitors, and war rebels are not exchanged according to the common law of war. The exchange of such persons would

require a special cartel, authorized by the government, or, at a great distance from it, by the chief commander of the army in the field.

104. A successful spy or war traitor, safely returned to his own army, and afterwards captured as an enemy, is not subject to punishment for his acts as a spy or war traitor, but he may be held in closer custody as a person individually dangerous.

SECTION VI.

EXCHANGE OF PRISONERS—FLAGS OF TRUCE[1]—FLAGS OF PROTECTION.

105. Exchanges of prisoners take place, number for number, rank for rank, wounded for wounded, with added condition for added condition, such, for instance, as not to serve for a certain period.

---

[1] FLAGS OF TRUCE.

1. *Dispatch of flag.*—Communication by flag of truce, being an exception to the fundamental rule of nonintercourse between belligerents, is not to be resorted to except by the authority of the President or the commanding general of the army or forces operating against the enemy in the field. No inferior commander is empowered to resort to the use of a flag of truce except by the direction of such authorized superior.

2. The party sent out with a flag of truce should be commanded by a commissioned officer designated for the purpose. His command should consist of such number of noncommissioned officers and soldiers as may be requisite for the purposes of the mission, and no more; the party should be reduced to the least number that may be adequate and reasonable. No military person not a constituent of the party, and no civilian, should be allowed to accompany the flag, except by the express authority of the commander dispatching the same.

3. The officer commanding the party, or bearer proper, should be furnished with specific instructions, in writing if practicable, informing and directing him precisely as to his function and duties. Communications committed to him to be conveyed to the enemy should, if practicable, be in writing.

4. The officer in charge should comply literally and exactly with his instructions, not exceeding them. On approaching the enemy's lines he should exhibit the flag, or white signal employed as such, in time and in such a manner as to prevent his party being fired upon. He should deliver his dispatches, if any, to an officer duly authorized to receive them, should receive and carefully retain such dispatches as may be delivered to him, and, his mission being completed, should return as promptly as possible within his own lines. During his absence he should require his escort to confine themselves to their strict duties, and prohibit their holding any communication, except such as may be absolutely necessary, with the military persons or civilians within the enemy's lines.

5. The officer in charge, on his return, is to make at once to the commander by whose order he was dispatched a full report of the performance of his mission, including his precise communications to the enemy and the precise acts and communications of the enemy in reply thereto. He should furnish also a list of all persons, if any, accompanying the flag or returning with it, such as exchanged prisoners, persons authorized to pass the lines, etc., with the fact of their examination and all obtainable particulars of their character and purposes.

6. *Reception of flag.*—By the law of nations, the bearer in good faith of a flag of truce is, with his escort, inviolable. The flag is not to be fired upon, nor the bearer, or persons properly accompanying him, to be made prisoners. They are to be received with respect and treated with courtesy, and at the end of their mission to be allowed to return without impediment. Where unavoidably detained, they will, if necessary, properly be sheltered and subsisted and their animals foraged.

7. But as a flag of truce may be employed as a cover for illegal designs, the party should not be allowed to enter within the outer line of guards or pickets in the absence of express authority from the commander of the forces, and such precautions should be taken as to prevent their making observations or obtaining information.

8. The flag should either be met by another flag on the neutral ground or territory

106. In exchanging prisoners of war, such numbers of persons of inferior rank may be substituted as an equivalent for one of superior rank as may be agreed upon by cartel, which requires the sanction of the Government or of the commander of the army in the field.

107. A prisoner of war is in honor bound truly to state to the captor his rank, and he is not to assume a lower rank than belongs to him, in order to cause a more advantageous exchange, nor a higher rank, for the purpose of obtaining better treatment.

---

intervening between the hostile lines, or, on its arrival near the outer line, should be halted by the nearest sentinel or vedette and ordered to face in the direction from which it came. The sentinel or vedette will then, through his corporal, communicate the arrival of the flag to the officer in command of the nearest picket post or guard, who will himself proceed, or will send a commissioned or noncommissioned officer, with a small detachment, to meet the flag and ascertain its object, of which he will at once cause information to be transmitted to the chief commander. The commander, if he desires to receive the flag, which, in discretion, he may refuse to do, will thereupon dispatch a commissioned officer, with suitable escort and proper instructions, to formally receive the flag and respond officially to its communications, or to take charge of such dispatches as the bearer may desire to have forwarded to commander, returning later with the response, if any.

9. Should the officer in charge of the flag insist, in obedience to his instructions, upon a personal interview with the chief commander, the latter may, in his discretion, refuse such interview, or he may proceed to meet the flag in person, or he may cause the bearer to be conducted to his headquarters, or other place appointed, his eyes being bandaged if deemed expedient. But no no member of his escort should, except by express authority, be admitted with him within the lines.

10. Where, indeed, the flag is employed as a means of safe conduct for exchanged prisoners, hostages, refugees, or other civilians permitted by proper authority to pass the lines, these may be admitted by the authority of the chief commander, after having been carefully examined to ascertain if they have in their possession supplies or merchandise. They should be allowed to bring in with them only necessary personal effects.

11. Until the purpose of a flag of truce is accomplished and the party returns, the bearer and those accompanying him (except so far as admitted by authority within the lines) will remain halted in the same or other appointed place, in the presence of an adequate guard, or, if unusual delay be involved, may be allowed to make camp, under proper observation. During their stay no conversation should be held with them on any subject directly or indirectly relating to military or public affairs, and the guard attending them should be accompanied by a commissioned or noncommissioned officer to insure the observance of this precaution.

12. Should the officer in charge of the flag, or any of his escort, be detected in an attempt to obtain illicit information, or in any other form of abuse of the privilege of the flag, or should there arise a reasonable ground of suspicion that the flag has not been dispatched, or is not being employed, in good faith, the bearer and those implicated may be detained for investigation and punishment according to the laws of war. (G. O., No. 43, Headquarters of the Army, May 20, 1893.)

The use of flags of truce by the enemy during the late war was recognized as a belligerent right.(*a*) But the admission by flag of truce within the lines of the United States Army in time of war of persons coming from the lines of an enemy, can not entitle such persons to immunity from subsequent inquiry into their character and business, or from restraint and detention upon reasonable grounds of suspicion appearing against them. Moreover, a flag of truce does not operate as a *safe-conduct*, allowing the party admitted under it a free passage through the territory or a dispensation from the legal effects of war, but affords him a merely temporary protection not to be continued after the immediate mission of the flag has been accomplished. So held that a person who, during the war, availed himself of a flag of truce to enter our lines for an illegal purpose, was in no degree protected by the flag from liability to arrest, upon his purpose becoming apparent, or from amenability to trial and punishment for any overt act in violation of the laws of war. (Dig. Opin. J. A. G., 1374.)

---

[a] Williams *v.* Bruffy, 6 Otto, 187.

Offenses to the contrary have been justly punished by the commanders of released prisoners, and may be good cause for refusing to release such prisoners.

108. The surplus number of prisoners of war remaining after an exchange has taken place is sometimes released either for the payment of a stipulated sum of money, or, in urgent cases, of provision, clothing, or other necessaries.

Such arrangement, however, requires the sanction of the highest authority.

109. The exchange of prisoners of war is an act of convenience to both belligerents. If no general cartel has been concluded it can not be demanded by either of them. No belligerent is obliged to exchange prisoners of war.

A cartel is voidable as soon as either party has violated it.

110. No exchange of prisoners shall be made except after complete capture, and after an accurate account of them, and a list of the captured officers has been taken.

111. The bearer of a flag of truce can not insist upon being admitted. He must always be admitted with great caution. Unnecessary frequency is carefully to be avoided.

112. If the bearer of a flag of truce offer himself during an engagement, he can be admitted as a very rare exception only. It is no breach of good faith to retain such flag of truce, if admitted during the engagement. Firing is not required to cease on the appearance of a flag of truce in battle.

113. If the bearer of a flag of truce, presenting himself during an engagement, is killed or wounded it furnishes no ground of complaint whatever.

114. If it be discovered, and fairly proved, that a flag of truce has been abused for surreptitiously obtaining military knowledge, the bearer of the flag thus abusing his sacred character is deemed a spy.

So sacred is the character of a flag of truce, and so necessary is its sacredness, that while its abuse is an especially heinous offense, great caution is requisite, on the other hand, in convicting the bearer of a flag of truce as a spy.

114. It is customary to designate by certain flags (usually yellow) the hospitals in places which are shelled, so that the besieging enemy may avoid firing on them. The same has been done in battles when hospitals are situated within the field of the engagement.

116. Honorable belligerents often request that the hospitals within the territory of the enemy may be designated, so that they may be spared.

An honorable belligerent allows himself to be guided by flags or signals of protection as much as the contingencies and the necessities of the fight will permit.

117. It is justly considered an act of bad faith, of infamy or fiendishness, to deceive the enemy by flags of protection. Such act of bad faith may be good cause for refusing to respect such flags.

118. The besieging belligerent has sometimes requested the besieged to designate the buildings containing collections of works of art, scientific museums, astronomical observatories, or precious libraries, so that their destruction may be avoided as much as possible.

SECTION VII.

THE PAROLE.

119. Prisoners of war may be released from captivity by exchange, and, under certain circumstances, also by parole.

120. The term parole designates the pledge of individual good faith and honor to do, or to omit doing, certain acts after he who gives his parole shall have been dismissed, wholly or partially, from the power of the captor.

121. The pledge of the parole is always an individual, but not a private act.

122. The parole applies chiefly to prisoners of war whom the captor allows to return to their country or to live in greater freedom within the captor's country or territory on conditions stated in the parole.

123. Release of prisoners of war by exchange is the general rule; release by parole is the exception.

124. Breaking the parole is punished with death when the person breaking the parole is captured again.

Accurate lists, therefore, of the paroled persons must be kept by the belligerents.

125. When paroles are given and received there must be an exchange of two written documents, in which the name and rank of the paroled individuals are accurately and truthfully stated.

126. Commissioned officers only are allowed to give their parole, and they can give it only with the permission of their superior, as long as a superior in rank is within reach.

127. No noncommissioned officer or private can give his parole except through an officer. Individual paroles not given through an officer are not only void, but subject the individuals giving them to the punishment of death as deserters. The only admissible exception is where individuals, properly separated from their commands, have suffered long confinement without the possibility of being paroled through an officer.

128. No paroling on the battlefield, no paroling of entire bodies of troops after a battle, and no dismissal of large numbers of prisoners, with a general declaration that they are paroled, is permitted or of any value.

129. In capitulations for the surrender of strong places or fortified camps the commanding officer, in cases of urgent necessity, may agree that the troops under his command shall not fight again during the war unless exchanged.

130. The usual pledge given in the parole is not to serve during the existing war unless exchanged.

This pledge refers only to the active service in the field, against the paroling belligerent or his allies actively engaged in the same war. These cases of breaking the parole are patent acts, and can be visited with the punishment of death; but the pledge does not refer to internal service, such as recruiting or drilling the recruits, fortifying places not besieged, quelling civil commotions, fighting against belligerents unconnected with the paroling belligerents, or to civil or diplomatic service for which the paroled officer may be employed.

131. If the government does not approve of the parole, the paroled officer must return into captivity, and should the enemy refuse to receive him, he is free of his parole.

132. A belligerent government may declare, by a general order, whether it will allow paroling, and on what conditions it will allow it. Such order is communicated to the enemy.

133. No prisoner of war can be forced by the hostile government to parole himself, and no government is obliged to parole prisoners of war or to parole all captured officers if it paroles any. As the pledging of the parole is an individual act, so is paroling, on the other hand, an act of choice on the part of the belligerent.

134. The commander of an occupying army may require of the civil officers of the enemy, and of its citizens, any pledge he may consider necessary for the safety or security of his army, and upon their failure to give it he may arrest, confine, or detain them.

SECTION VIII.

ARMISTICE—CAPITULATION.

135. An armistice is the cessation of active hostilities for a period agreed between belligerents. It must be agreed upon in writing, and duly ratified by the highest authorities of the contending parties.

136. If an armistice be declared, without conditions, it extends no further than to require a total cessation of hostilities along the front of both belligerents.

If conditions be agreed upon, they should be clearly expressed, and must be rigidly adhered to by both parties. If either party violates any express condition, the armistice may be declared null and void by the other.

137. An armistice may be general, and valid for all points and lines of the belligerents, or special; that is, referring to certain troops or certain localities only.

An armistice may be concluded for a definite time or for an indefinite time, during which either belligerent may resume hostilities on giving the notice agreed upon to the other.

138. The motives which induce the one or the other belligerent to conclude an armistice, whether it be expected to be preliminary to a treaty of peace or to prepare during the armistice for a more vigorous prosecution of the war, does in no way affect the character of the armistice itself.

139. An armistice is binding upon the belligerents from the day of the agreed commencement; but the officers of the armies are responsible from the day only when they receive official information of its existence.

140. Commanding officers have the right to conclude armistices binding on the district over which their command extends, but such armistice is subject to the ratification of the superior authority, and ceases so soon as it is made known to the enemy that the armistice is not ratified, even if a certain time for the elapsing between giving notice of cessation and the resumption of hostilities should have been stipulated for.

141. It is incumbent upon the contracting parties of an armistice to stipulate what intercourse of persons or traffic between the inhabitants of the territories occupied by the hostile armies shall be allowed, if any. If nothing is stipulated, the intercourse remains suspended, as during actual hostilities.

142. An armistice is not a partial or a temporary peace; it is only the suspension of military operations to the extent agreed upon by the parties.

143. When an armistice is concluded between a fortified place and the army besieging it, it is agreed by all the authorities on this subject that the besieger must cease all extension, perfection, or advance of his attacking works as much so as from attacks by main force.

But as there is a difference of opinion among martial jurists whether the besieged have the right to repair breaches or to erect new works of defense within the place during an armistice, this point should be determined by express agreement between the parties.

144. So soon as a capitulation is signed, the capitulator has no right to demolish, destroy, or injure the works, arms, stores, or ammunition in his possession during the time which elapses between the signing and the execution of the capitulation, unless otherwise stipulated in the same.

145. When an armistice is clearly broken by one of the parties, the other party is released from all obligation to observe it.

146. Prisoners taken in the act of breaking an armistice must be treated as prisoners of war, the officer alone being responsible who gives the order for such a violation of an armistice. The highest authority of the belligerent aggrieved may demand redress for the infraction of an armistice.

147. Belligerents sometimes conclude an armistice while their plenipotentiaries are met to discuss the conditions of a treaty of peace; but plenipotentiaries may meet without a preliminary armistice; in the latter case the war is carried on without any abatement.

SECTION IX.

ASSASSINATION.

148. The law of war does not allow proclaiming either an individual belonging to the hostile army or a citizen or a subject of the hostile government an outlaw who may be slain without trial by any captor, any more than the modern law of peace allows such intentional outlawry; on the contrary, it abhors such outrage. The sternest retaliation should follow the murder committed in consequence of such proclamation, made by whatever authority. Civilized nations look with horror upon offers of rewards for the assassination of enemies as relapses into barbarism.

SECTION X.

INSURRECTION—CIVIL WAR—REBELLION.

149. Insurrection is the rising of people in arms against their government or a portion of it, or against one or more of its laws, or against an officer or officers of the government. It may be confined to mere armed resistance, or it may have greater ends in view.

150. Civil war is war between two or more portions of a country or state, each contending for the mastery of the whole, and each claiming to be the legitimate government. The term is also sometimes applied to war of rebellion, when the rebellious provinces or portions of the state are contiguous to those containing the seat of government.

151. The term rebellion is applied to an insurrection of large extent, and is usually a war between the legitimate government of a country and portions of provinces of the same who seek to throw off their allegiance to it and set up a government of their own.

152. When humanity induces the adoption of the rules of regular war toward rebels, whether the adoption is partial or entire, it does in no way whatever imply a partial or complete acknowledgment of their government, if they have set up one, or of them as an independent or sovereign power. Neutrals have no right to make the adoption of the rules of war by the assailed government toward rebels the ground of their own acknowledgment of the revolted people as an independent power.

153. Treating captured rebels as prisoners of war, exchanging them, concluding of cartels, capitulations, or other warlike agreements with them, addressing officers of a rebel army by the rank they may have

in the same, accepting flags of truce, or, on the other hand, proclaiming martial law in their territory, or levying war taxes or forced loans, or doing any other act sanctioned or demanded by the law and usages of public war between sovereign belligerents, neither proves nor establishes an acknowledgment of the rebellious people, or of the government which they may have erected, as a public or sovereign power. Nor does the adoption of the rules of war toward rebels imply an engagement with them extending beyond the limits of these rules. It is victory in the field that ends the strife and settles the future relations between the contending parties.

154. Treating, in the field, the rebellious enemy according to the law and usages of war has never prevented the legitimate government from trying the leaders of the rebellion or chief rebels for high treason, and from treating them accordingly, unless they are included in a general amnesty.

155. All enemies in regular war are divided into two general classes—that is to say, into combatants and noncombatants, or unarmed citizens of the hostile government.

The military commander of the legitimate government, in a war of rebellion, distinguishes between the loyal citizen in the revolted portion of the country and the disloyal citizen. The disloyal citizen may further be classified into those citizens known to sympathize with the rebellion without positively aiding it, and those who, without taking up arms, give positive aid and comfort to the rebellious enemy without being bodily forced thereto.

156. Common justice and plain expediency require that the military commander protect the manifestly loyal citizens in revolted territories against the hardships of the war as much as the common misfortune of all war admits.

The commander will throw the burden of the war, as much as lies within his power, on the disloyal citizens of the revolted portion or province, subjecting them to a stricter police than the noncombatant enemies have to suffer in regular war; and if he deems it appropriate, or if his government demands of him that every citizen shall, by an oath of allegiance or by some other manifest act, declare his fidelity to the legitimate government, he may expel, transfer, imprison, or fine the revolted citizens who refuse to pledge themselves anew as citizens obedient to the law and loyal to the government.

Whether it is expedient to do so, and whether reliance can be placed upon such oaths, the commander or his government have the right to decide.

157. Armed or unarmed resistance by citizens of the United States against the lawful movements of their troops is levying war against the United States, and is therefore treason.

CIVIL SERVICE RULES.[1]

[Amendments to July 3, 1901.]

SYNOPSIS OF RULES.

Rule I. Regulations to be prescribed; definition of terms.

Rule II. Penalties and prohibitions; status of persons after their positions are classified.

Rule III. Extent of each of the five branches of the classified service; employees excluded from the classified service.

Rule IV. Examinations authorized; when noncompetitive examinations may be held; appointment and duties of boards of examiners; executive officers to facilitate examinations.

Rule V. Restrictions governing applicants and applications; disqualifications of applicants and eligibles; age limitations of applicants.

Rule VI. Exceptions from examination.

Rule VII. Rating of examination papers; relative standing of eligibles; relative standing of preference claimants; registration of applicants; term of eligibility.

Rule VIII. Certifications and selections for filling vacancies; revocation of appointments of eligibles not entitled to certification; probationary period and absolute appointment; objection by appointing officer to eligible; apportionment of appointments in Washington, D. C.; to what class appointment must be made; eligibles with same average percentage; districts to be formed for filling vacancies in certain positions; appointment and promotion of substitutes; temporary or emergency appointments.

---

[1] The civil service rules are merely Executive rules and regulations made by authority of law, and are effective, if at all, only for the internal control and government of the civil service and the Executive Departments. The courts of equity have no jurisdiction or authority to enforce them. Taylor *v.* Kercheval, 82 Fed. Rep., 487; Carr *v.* Gordon, 82, ibid., 373.

The civil service rules promulgated by the President have not the force of law so as to give the employees any tenure or right to the office. Morgan *v.* Nunn, 84 Fed. Rep., 551; Carr *v.* Gordon, 82 Id., 373; Taylor *v.* Kercheval, 82 Fed. Rep., 497.

In the absence of evidence to the contrary the accounting officers will, in the settlement of salary accounts, assume that the civil service law and rules have been complied with by the officer having the power of appointment. III Compt. Dec., 22.

RULE IX. Reinstatements.

RULE X. Transfers.

RULE XI. Promotions.

RULE XII. List of all positions and employments and reports of changes in service to be furnished to commission.

Promulgating order.

In the exercise of power vested in him by the Constitution, and of authority given to him by the seventeen hundred and fifty-third section of the Revised Statutes, and by an act to regulate and improve the civil service of the United States, approved January 16, 1883, the President hereby makes and promulgates the following rules, and revokes all others:

RULE I.

Commission to prescribe regulations.

1. The United States Civil Service Commission shall have authority to prescribe regulations in pursuance of, and for the execution of, the provisions of these rules and of the civil-service act.

Definitions of terms.

2. The several terms hereinafter mentioned, wherever used in these rules or the regulations of the commission, shall be construed as follows:

(*a*) The term "civil-service act" refers to "An act to regulate and improve the civil service of the United States," approved January 16, 1883.

(*b*) The term "classified service" refers to all that part of the executive civil service of the United States included within the provisions of the civil-service act and these rules.

(*c*) The term "grade," in connection with employees or positions, refers to a group of employees or positions in the classified service arranged upon the basis of duties performed without regard to salaries received.

(*d*) The term "class," in connection with employees or positions, refers to a group of employees or positions in any grade arranged upon the basis of salaries received, in pursuance of the provisions of section 163 of the Revised Statutes and of section 6 of the civil-service act.

(*e*) The term "excepted position" refers to any position within the provisions of the civil-service act, but excepted from the requirement of competitive examination or registration for appointment thereto.

RULE II.

Dismissal for violation of act or rules.

1. Any person in the executive civil service of the United States who shall willfully violate any of the pro-

visions of the civil-service act or of these rules shall be dismissed from office.

No interference with elections.

2. No person in the executive civil service shall use his official authority or official influence for the purpose of interfering with an election or controlling the result thereof.

No dismissal or change of rank for political or religious opinions.

3. No person in the executive civil service shall dismiss, or cause to be dismissed, or make any attempt to procure the dismissal of, or in any manner change the official rank or compensation of any other person therein because of his political or religious opinions or affiliations.

No disclosures of political or religious opinions of applicants, etc.

4. No question in any examination, or form of application, shall be so framed as to elicit information concerning, nor shall any inquiry be made concerning, nor any other attempt be made to ascertain, the political or religious opinions or affiliations of any applicant, competitor, or eligible; and all disclosures thereof shall be discountenanced. And no discrimination shall be exercised, threatened, or promised, against or in favor of any applicant, competitor, or elibible because of his political or religious opinions or affiliations.

Recommendations that can not be received, filed, or considered.

5. No recommendation of an applicant, competitor, or eligible, involving any disclosure of his political or religious opinions or affiliations, shall be received, filed, or considered by the commission, by any board of examiners, or by any nominating or appointing officer.

Penalties like in character.

6. In making removals or reductions, or in imposing punishment, for delinquency or misconduct, penalties like in character shall be imposed for like offenses, and action thereupon shall be taken irrespective of the political or religious opinions or affiliations of the offenders.

Status of employees after classification.

7. A person holding a position on the date said position is classified under the civil-service act shall be entitled to all the rights and benefits possessed by persons of the same class or grade appointed upon examination under the provisions of said act.

Procedure in removals.

8. No removal shall be made from the competitive classified service except for just cause and for reasons given in writing; and the person sought to be removed shall have notice and be furnished a copy of such reasons, and be allowed a reasonable time for personally answering the same in writing. Copy of such reasons, notice, and answer, and of the order of removal shall be made a part of the records of the proper department or office; and the reasons for any change in rank or compensation within

the competitive classified service shall also be made a part of the records of the proper department or office.[1]

RULE III.

Different branches of classified service.

1. All that part of the executive civil service of the United States which has been or may hereafter be classified under the civil-service act shall be arranged in branches as follows: The departmental service, * * *

2. The departmental service shall include * * *

Extent of departmental service.

(*a*) All officers and employees of whatever designation, except persons merely employed as laborers or workmen and persons whose appointments are subject to confirmation by the Senate, however or for whatever purpose employed, whether compensated by a fixed salary or otherwise, who are serving in or on detail from—

The several Executive Departments, the commissions, and offices in the District of Columbia.

* * * * *

The force employed under custodians of public buildings.

* * * * *

The Engineer Department at large.

The Ordnance Department at large.

(*b*) All executive officers and employees outside of the District of Columbia not covered in (*a*), of whatever designation, except persons merely employed as laborers or workmen and persons whose appointments are subject to confirmation by the Senate, whether compensated by a fixed salary or otherwise—

Who are serving in a clerical capacity or whose duties are in whole or in part of a clerical nature.

Who are serving in the capacity of watchman or messenger.

Who are serving in the capacity of physician, hospital steward, nurse, or whose duties are of a medical nature.

Who are serving in the capacity of draftsman, civil engineer, steam engineer, electrical engineer, computer, or fireman.

* * * * *

---

[1] Amended July 27, 1897, and May 29, 1899.

The order of the President of July 27, 1897, prohibiting removals from positions subject to competitive examination except upon written charges and notice, is an administrative order regulating the conduct of the President's subordinates; but it has not the force of law, and confers upon an incumbent no right to hold office indefinitely, and no right of which a court of equity can take cognizance. Carr *v.* Gordon, 82 Fed. Rep., 373.

Employees already classified covered by rules.

7. All officers and employees who have heretofore been classified under the civil-service act shall be considered as still classified and subject to the provisions of these rules.

Employees and positions not covered by rules.

8. The following-mentioned positions or employees shall not be subject to any of the provisions of these rules, except sections 1, 2, and 3 of Rule II:[1]

(*a*) Any position filled by a person whose place of private business is conveniently located for his performance of the duties of said position, or any position filled by a person remunerated in one sum both for services rendered therein, and for necessary rent, fuel, and lights furnished for the performance of the duties thereof: *Provided*, That in either case the performance of the duties of said position requires only a portion of the time and attention of the occupant, paying him a compensation not exceeding, for his personal salary only, three hundred dollars per annum, and permitting of his pursuing other regular business or occupation.

(*b*) Any person in the military or naval service of the United States who is detailed for the performance of civil duties.

(*c*) Any person employed in a foreign country, under the State Department, or who is temporarily employed in a confidential capacity in a foreign country under any executive department or other office.[1]

(*d*) Any position the duties of which are of quasi-military or quasi-naval character and for the performance of which duties a person is enlisted for a term of years.

* * * * * * *

(*g*) Any person in the Quartermaster's Department at large of the United States Army employed as train master, chief packer, foreman packer, pack master, master baler, foreman of laborers, superintendent of stables, or forage master. Appointments to these positions shall be made hereafter on registration tests of fitness prescribed in regulations to be issued by the Secretary of War and approved by the President.[1]

(*h*) Any person in the Medical Department at large of the United States Army employed as chief packer, packer, or assistant packer. Appointments to these positions shall be made hereafter on registration tests of fitness prescribed in regulations to be issued by the Secretary of War and approved by the President.[1]

(*i*) Any person in the Ordnance Department at large of the United States Army employed as foreman, assistant foreman, forage master, weigher, skilled laborer, guard, or on piecework. Appointments to these positions shall be made hereafter on registration tests of fitness prescribed in regulations to be issued by the Secretary of War and approved by the President.[1]

---

[1] Amended May 29, 1899.

(*j*) Any person in the Engineer Department at large of the United States Army employed as subinspector, overseer, suboverseer, superintendent, master lock manager, deputy lock manager, assistant superintendent of canal, chief deputy inspector, deputy inspector, rodman, stadiaman, chainman, foreman, timekeeper, lock master, assistant lock master, custodian, storekeeper, fort keeper, torpedo keeper, assistant torpedo keeper, light keeper, board master, subforeman, master laborer, gauge reader, steward, dam tender, assistant dam tender, helper, carpenter's helper, machinist's helper, quarry master, blacksmith's helper, climber, barge master, recorder of vessels, track man, gardener, assistant gardener, or weigher. Appointments to these positions shall be made hereafter on registration tests of fitness prescribed in regulations to be issued by the Secretary of War and approved by the President.[1]

(*k*) Any person in the national military parks at Gettysburg, Shiloh, Chickamauga, Chattanooga, Vicksburg, and Antietam employed as commissioner, assistant in historical work, agent for purchases of land, historian, secretary, rodman, chainman, assistant superintendent, chief guardian, guardian, guard, inspector, carpenter, steam engineer, or painter. Appointments to these positions shall be made hereafter on registration tests of fitness prescribed in regulations to be issued by the Secretary of War and approved by the President.[1]

* * * * * * *

RULE IV.

Examinations authorized.

1. In pursuance of the provisions of section 2 of the civil-service act, there shall be provided, to test fitness for admission to positions which have been, or may hereafter be, classified under the civil-service act, examinations of a practical and suitable character involving such subjects and tests as the commission may direct.

Examinations required.

2. No person shall be appointed to, or be employed in, any position which has been, or may hereafter be, classified under the civil-service act, until he shall have passed

---

[1] Amended May 29, 1899.

the examination provided therefor, or unless he is specially exempt from examination by the provisions of said act or the rules made in pursuance thereof.[1]

When noncompetitive examinations may be held.

3. In pursuance of the provisions of section 2 of the civil-service act, wherever competent persons can be found who are willing to compete, no noncompetitive examination shall be given except as follows:

(*a*) To test fitness for transfer or for promotion in a part of the service to which promotion regulations have not been applied.

* * * * * *

When examination may be waived.

(*c*) To test the fitness of a person whom the head of an Executive Department or the Secretary of the Smithsonian Institution shall nominate for appointment to a position in the classified service. The appointing officer in making such nomination shall certify that, in his opinion, the position to be filled requires such peculiar qualifications in respect to knowledge and ability, or such scientific or special attainments wholly or in part professional or technical as are not ordinarily acquired in the executive service of the United States, and for the reasons set forth the best interests of the public service require that an examination should be waived in whole or in part. If the President of the United States shall approve such nomination, the Civil Service Commission shall thereupon grant a certificate of qualification, upon such evidence as may be satisfactory to it, that the person so nominated is eligible for and may be appointed to such position by reason of his ascertained qualifications, and by reason of his age, health, and moral character: *Provided*, That a person so nominated and appointed shall not be transferred to any other position in the classified service except to one that may be filled under the provisions of this clause, and shall not be assigned to any other duties than those pertaining to the particular position to which thus appointed.[1]

---

[1] No person is eligible to an examination—

(*a*) Who is not a citizen of the United States (see sec. 35, Regulation V);

(*b*) Who is not within the age limitations prescribed for the examination for which he applies (see secs. 14–18);

(*c*) Who is physically disqualified for the service which he seeks;

(*d*) Who is addicted to the habitual use of intoxicating beverages to excess;

(*e*) Who is barred by Application Regulations IX and X (see sec. 35);

(*f*) Who is enlisted in the United States Army or Navy and has not secured permission for his examination from the Secretary of War or the Secretary of the Navy, respectively.

(*g*) Who has been dismissed from the public service for delinquency or misconduct within one year preceding the date of his application;

(*h*) Who has failed after probation to receive absolute appointment to the position for which he again applies within one year from the date of the expiration of his probationary service;

(*i*) Who within one year has taken the same kind of examination for which he wishes to again apply: *Provided*, That persons who pass or fail in an examination may, upon filing a new application, be reexamined at the next annual examinations, though a full year has not quite elapsed since the former examination (see sec. 180);

(*j*) Who has made a false statement in his application or has been guilty of fraud or deceit in any manner connected with his application or examination, or who has been guilty of crime or infamous or notoriously disgraceful conduct. Section 12, MANUAL OF EXAMINATION.

Dates and places of examinations.

4. In pursuance of the provisions of section 3 of the civil-service act, examinations shall be provided at such places and upon such dates as the commission shall deem most practicable to subserve the convenience of applicants and the needs of the service.

Appointment and duties of boards of examiners.

5. In pursuance of the provisions of section 3 of the civil-service act, the commission shall appoint, from persons in the Government service, such boards of examiners as it may deem necessary. The members of said boards shall perform such duties as the commission may direct in connection with examinations, appointments, and promotions in any part of the service which has been or may hereafter be classified. The members of any board of examiners in the performance of their duties as such shall be under the direct and sole control and authority of the commission. The duties performed by the members of any board of examiners in their capacity as such shall be considered part of the duties of the office in which they are serving, and time shall be allowed for the peformance of said duties during the office hours of said office. The members of any board of examiners shall not all be adherents of one political party when persons of other political parties are available and competent to serve upon said board.

Executive officers to facilitate examinations.

6. In pursuance of the provisions of section 3 of the civil-service act, all executive officers of the United States shall facilitate civil-service examinations, and postmasters, customs officers, internal-revenue officers, and custodians of public buildings at places where such examinations are to be held shall, for the purpose of such examinations, permit and arrange for the use of suitable rooms under their charge and for heating, lighting, and furnishing the same.

RULE V.

Qualifications of applicants.

1. Every applicant for examination must be a citizen of the United States, must be of proper age, and must make an application under oath, upon a form prescribed by the commission, and accompanied by such certificates as may be prescribed.

---

[1] Amended May 29, 1899.

Applications from enlisted men.

2. No application for examination shall be accepted from any person serving in the Army, the Navy, or Marine Corps of the United States, unless the written consent of the head of the Department under which said person is enlisted is filed with his application.

Disqualifications of applicants and eligibles.

3. The commission may, in its discretion, refuse to examine an applicant, or to certify an eligible, who is physically so disabled as to be rendered unfit for the performance of the duties of the position to which he seeks appointment; or who has been guilty of a crime or of infamous or notoriously disgraceful conduct; or who has been dismissed from the service for delinquency or misconduct within one year next preceding the date of his application; or who has intentionally made a false statement in any material fact, or practiced or attempted to practice any deception or fraud in securing his registration or appointment. Any of the foregoing disqualifications shall be good cause for the removal of an eligible from the service after his appointment.

Age limitation for applicants.
No age limitations for preference claimants.

4. No application for examination shall be accepted unless the applicant is within the age limitations fixed herein for entrance to the position to which he seeks to be appointed: *Provided*, That subject to the other conditions of these rules the application of any person whose claim of preference under the provisions of section 1754 of the Revised Statutes has been allowed by the commission may be accepted without regard to his age: *And provided further*, That in case of positions for which no maximum age limitations are fixed herein the commission, upon consultation with and approval of the proper head of Department or office, may, by regulation, determine maximum age limitations and confine competition in examinations for such positions to persons within such limitations. The age limitations for entrance to positions in the different branches of the service shall be as follows:

	Minimum.	Maximum.
DEPARTMENTAL SERVICE:		
Page, messenger boy, apprentice (other than apprentice in mints and assay offices), or student	14	20
* * * * *		
All other positions	20	No limit.
* * * * *		

Applications for trade positions.

5. No application shall be accepted for examination for a position which belongs to one of the recognized mechanical trades unless it shall be shown that the applicant has served as apprentice or as journeyman or as apprentice and

journeyman at said trade for such periods as the commission may prescribe.

RULE VI.

The following-named employees or positions which have been classified under the civil-service act shall be excepted from the requirement of examination or registration, unless as otherwise herein specifically stated.

Exceptions from examination or registration.

EXECUTIVE OFFICE.

1. Not exceeding two private secretaries or confidential clerks to the President.

ALL EXECUTIVE DEPARTMENTS.

2. Not exceeding two private secretaries or confidential clerks to the head of each of the eight Executive Departments.[1]

3. Not exceeding one private secretary or confidential clerk to each of the assistant heads of the eight Executive Departments.[1]

4. Not exceeding one private secretary or confidential clerk to each of the following heads of bureaus appointed by the President and confirmed by the Senate in the eight Executive Departments: * * * in the War Department, the Major-General Commanding the Army, the Adjutant-General, the Inspector-General, the Judge-Advocate-General, the Quartermaster-General, the Commissary-General of Subsistence, the Surgeon-General, the Paymaster-General, the Chief of Engineers, the Chief of Ordnance, the Chief Signal Officer, the Chief of the Record and Pension Office, and the Superintendent of Public Buildings and Grounds.[1] * * *

5. Not exceeding one private secretary or confidential clerk to each of the heads of bureaus appointed by the President and confirmed by the Senate in the eight Executive Departments not enumerated in paragraph four of this rule, if authorized by law.[1]

6. All persons appointed by the President without confirmation by the Senate.[1]

* * * * *

WAR DEPARTMENT.

27. All paymasters' clerks.[2]

* * * * *

---

[1] Amended May 29, 1899.

[2] Amended June 29, 1900.

RULE VII.

Rating examination papers.

1. Examination papers shall be rated on a scale of 100, and the subjects therein shall be given such relative weights as the commission may prescribe. After a competitor's papers have been rated, he shall be duly notified of the result thereof.

Eligible average.

Eligible average of preference claimants.

2. Every competitor who attains an average percentage of 70 or over shall be eligible for appointment to the position for which he was examined; and the names of eligibles shall be entered, in the order of their average percentages, on the proper register of eligibles: *Provided*, That the names of all competitors whose claims to preference under the provisions of section 1754 of the Revised Statutes have been allowed by the commission, and who attain an average percentage of 65 or over, shall be placed, in the order of their average percentages, at the head of the proper register of eligibles.

Registration of applicants.

Registration of preference claimants.

3. For filling vacancies in positions for which competitive tests are not practicable, the registration of applicants shall be in the order in which they fulfill the requirements prescribed therefor by regulation of the commission: *Provided*, That persons who served in the military or naval service of the United States in the late war of the rebellion or the Spanish-American war and were honorably discharged therefrom, and persons who have been separated from such position above mentioned through no delinquency or misconduct, shall be placed at the head of the proper register in the order of their fulfillment of said requirements.[1]

Term of eligibility.

Amended May 29, 1899.

Suspension of eligibility upon enlistment.

4. The term of eligibility shall be one year from the date on which the name of the eligible is entered on the register: *Provided*, That this term may be extended, in the discretion of the commission, for a further period of one year from the date of the expiration of the first year's eligibility, upon such conditions as the commission may prescribe: *And provided further*, That in case a person whose name is upon any register shall be mustered into the military or naval service of the United States at a time when the United States may be engaged in war, the period of eligibility of such person shall, under such conditions as the Civil Service Commission may prescribe, be considered as suspended during the time such eligible may be serving in the Army or Navy of the United States.[1]

---

[1] Amended May 29, 1899.

RULE VIII.

Method of filling vacancies.

In pursuance of the provisions of section 2 of the civil-service act, whenever a vacancy occurs in any position which has been, or may hereafter be, classified under the civil-service act, and which is not an excepted position, the filling of said vacancy, unless filled through noncompetitive examination or by reinstatement, transfer, promotion, or reduction, shall be governed as follows:

Three names to be certified.

Certification for temporary appointment.

Certification by sexes.

1. The appointing or nominating officer shall request certification to him of the names of eligibles for the position vacant, and the commission shall certify to said officer from the proper register the three names at the head thereof which have not been three times certified to the department or office in which the vacancy exists: *Provided*, That certification for temporary appointment shall not be counted as one of the three certifications to which an eligible is entitled: *And provided further*, That whenever the sex of those whose names are to be certified is fixed by any law, rule, or regulation, or is specified in the request for certification, the names of those of the sex so fixed or specified shall be certified; but in other cases certification shall be made without regard to sex.

Selections from certifications.

2. Of the three names certified the nominating or appointing officer shall select one, and if at the time of selection there are more vacancies than one he may select more than one name, unless otherwise directed by the commission.

Probationary period authorized.

What is equivalent to absolute appointment.

Discharge of probationer.

Termination of probation in Indian school service.

Service of substitute part of probationary period.

3. A person selected for appointment shall be notified of his selection by the appointing or nominating officer, and upon his acceptance shall receive from the appointing officer a certificate of appointment for a probationary period of six months, at the end of which period, if the conduct and capacity of the probationer are satisfactory to the appointing officer, his retention in the service shall be equivalent to his absolute appointment; but if his conduct or capacity be not satisfactory, he shall be notified by the appointing officer that he will not receive absolute appointment because of such unsatisfactory conduct or want of capacity; and such notification shall discharge him from the service: *Provided*, That the probation of an employee in the Indian school service shall terminate at the end of the school year in which he is appointed: *And provided further*, That the time which an employee has actually served as substitute in parts of the service where

substitutes are authorized shall be counted as part of the probationary period of his regular appointment, but that time served under a temporary appointment shall not be so counted.

Temporary service not to be so counted.

Objection of appointing officer to eligible.

4. If the appointing or nominating officer shall object to an eligible named in the certificate, stating that, because of some physical defect, mental unsoundness, or moral disqualification, particularly specified, said eligible would be incompetent or unfit for the performance of the duties of the vacant position, and if said officer shall sustain such objection with evidence satisfactory to the commission, the commission may certify the eligible on the register who is in average percentage next below those already certified in place of the one to whom objection is made and sustained.

Apportionment to be observed.

5. Certifications for appointment of persons for service in, or for direct detail from, any Department or office in Washington, D. C., shall be so made as to maintain, as nearly as the conditions of good administration will warrant, the apportionment of such appointments among the several States and Territories and the District of Columbia upon the basis of population: *Provided*, That appointments to the following-named positions shall not be so apportioned, viz: * * * those in the post quartermaster's office, * * * those of page, messenger boy, apprentice, and student, * * * *And provided further*, That a person who has been or may be separated from a classified position by reason of a necessary reduction of force, or by reason of an appointment to a position not in the classified service, may be reinstated under the provisions of Rule IX without filing new evidence of citizenship, and said appointment shall be charged to the apportionment of the State in which citizenship was claimed before said separation, unless a new citizenship is claimed, in which case the citizenship shall be proved in the manner required for original appointment.[1]

Exceptions from apportionment.

Amended May 29, 1899.

Waiver of evidence of citizenship.

* * * * * * *

Appointment to lowest class and exception thereto.

7. Within any part of the service to which promotion regulations have been, or may hereafter be, applied, certification of those eligible to original appointment shall not be made for filling a vacancy in a position above the lowest class in any grade, whenever there is any person eligible and willing to be promoted to said vacancy: *Provided*, That a vacancy in any position requiring the exercise of tech-

---

[1] Amended May 29, 1899.

nical or professional knowledge may be filled by original appointment.

8. When two or more eligibles on a register have the same average percentage, preference in certification shall be determined by the order in which their applications were filed.

Eligibles with same average percentage.

9. For filling vacancies in positions outside of the District of Columbia and * * * the depot quartermaster's office, * * * the territory of the United States shall be arranged in such sections or districts as the commission may determine; and an eligible shall be certified, in his order, to vacancies in the section or district in which he resides, and upon his written request to vacancies in any one or more of the other sections or districts: * * *

Vacancies to be filled by districts.

10. In any part of the service in which the employment of substitutes is not prohibited by law there may be certified and appointed, in the manner provided for in this rule, only such number of substitutes as are actually needed for the performance of substitute duty.

Employment of substitutes.

11. In any part of the service in which substitutes are employed certifications of those eligible to original appointment shall be made for filling vacancies in substitute positions only, and vacancies in regular positions shall be filled by the appointment or promotion thereto of substitutes in the order of their original appointment as substitutes whenever there are substitutes of the required sex who are eligible and willing to be so appointed or promoted. Substitutes so appointed or promoted shall, however, be subject to the provisions of these rules relating to probation and permanent appointment.

Appointment and promotion of substitutes.

* * * * * * *

13. Whenever there are no names of eligibles upon a register for any grade in which a vacancy exists and the public interest requires that it must be filled before eligibles can be provided by the commission, such vacancy may, subject to the approval of the commission, be filled by appointment without examination and certification for such part of three months as will enable the commission to provide eligibles. Such temporary appointment shall expire by limitation as soon as an eligible shall be provided, and no person shall serve longer than three months in any one year under such temporary appointment or appointments unless by special authority of the commission previously obtained. Said year limitation shall commence from the

Temporary appointment for emergency.

Restrictions upon temporary appointments.

date of such first appointment: *Provided*, That whenever an emergency shall arise requiring that a vacancy shall be filled before a certification can be issued and an appointment made thereto in the manner provided in these rules, such vacancy may be filled without regard to the provisions of these rules for such part of thirty days as may be required for the issuance of a certificate and the execution of the necessary details of an appointment thereto in accordance with said provisions. Such appointment shall in no case continue longer than thirty days.

When temporary appointment must cease.

14. Whenever a temporary appointment shall be made through certification from the eligible registers of the commission in the manner provided in these rules, such temporary appointment shall in no case continue longer than six months and shall expire by limitation at the end of that period.

When temporary appointment may be made permanent.
Promulgated May 29, 1899.

15. All persons serving under temporary appointments at the date of the approval of this section may be permanently appointed, in the discretion of the proper appointing officer, and the special rule approved January 20, 1899, relative to temporary appointments in the Navy Department, is hereby rescinded.[1]

RULE IX.

Reinstatements within one year.

A vacancy in any position which has been, or may hereafter be, classified under the civil-service act, may, upon requisition of the proper officer and the certificate of the commission, be filled by the reinstatement, without examination, of any person who, within one year next preceding the date of said requisition, has, through no delinquency or misconduct, been separated from a position included within the classified service at the date of said requisition and in that department or office and that branch of the service in which said vacancy exists: *Provided*, That for original entrance to the position proposed to be filled by reinstatement there is not required by these rules, in the opinion of the commission, an examination involving essential tests different from or higher than those involved in the examination for original entrance to the position formerly held by the person proposed to be reinstated: *And provided further*, That subject to the other conditions of these rules, any person who has served in the military or naval service of the United States in the late

Position to which reinstatement may be made.

Reinstatement of preference claimants.
Amended May 29, 1899.

---

[1] Added May 29, 1899.

war of the rebellion or in the Spanish-American war and was honorably discharged therefrom, or the widow of any such person, or an army nurse of either of said wars, and any person who has been separated from the service by reason of the discontinuance of the free-delivery service at any post-office, or a reduction of force specifically required by law, may be reinstated without regard to the length of time he or she has been separated from the service:

Amended Jan. 15, 1900.

And provided further, That any person dismissed from the service upon charges of delinquency or misconduct may be reinstated, subject to the other conditions of these rules, without regard to the one-year time limit of this rule, upon the certificate of the proper appointing officer that he has thoroughly investigated the case and that the charges upon which the dismissal was based were not true.[1]

Reinstatement where dismissal was made upon charges.

Rule X.

Transfers.

Within that part of the civil service of the United States which has been, or may hereafter be, classified under the civil-service act, transfers shall be governed as follows:

Transfers in same Department, office, or branch of service.

1. A person in any Department or office may be transferred within the same Department or office and the same branch of the service upon any test of fitness, not disapproved by the commission, which may be determined upon by the appointing officer, subject to the limitations of the provisos of section 2 of this rule.

Transfers from Department, office, or branch of service.

2. A person who has received absolute appointment may be transferred, without examination, from any Department, office, or branch of the service, upon requisition and consent of the proper officers, and the certificate of the commission: *Provided*, That no transfer shall be made of a person to a position within the same Department or office and the same branch of the service, or to a position in another Department, office, or branch of the service, if from original entrance to such position said person is barred by the age limitations prescribed therefor, or by the provisions regulating apportionment, but the provisions in relation to apportionment shall be waived upon the certificate of the appointing officer that the transfer is required in the interests of good administra-

Age limitations governing transfers.

---

[1] Amended May 29, 1899.

When examinations are required for transfers.

tion: *And provided further*, That transfers shall not be made without examination, provided by the commission, to a position for original entrance to which, in the judgment of the commission, there is required by these rules an examination involving essential tests different from or higher than those involved in the examination required for original entrance to the position from which transfer is proposed; but a person employed in any grade shall not because of such employment be barred from the open competitive examination provided for original entrance to any other grade.[1]

Employees not barred from open competitive examinations.

Transfer from the office of the President.

3. Upon requisition of the proper officer and the certificate of the commission, transfer may be made without examination from the office of the President of the United States, after continuous service therein for the two years next preceding the date of said requisition, to any position classified under the civil-service act, if in said position there is required, in the judgment of the commission, the performance of the same class of work that is required to be performed in the position from which transfer is proposed.

Transfers not to be made, exception.

4. Transfer shall not be made from an excepted position to a position not excepted: *Provided*, That a person holding a position which is excepted, but which he was holding at the time of its classification, or which he entered or held in accordance with the provisions of these rules at a time when said position was subject to competitive examination, and has since served continuously therein, or a person holding a position which is excepted, but which he entered prior to the President's order of November 2, 1894, and has since served continuously therein, may, subject to the other conditions and provisions of this rule, be transferred to a position not excepted.

No transfer from unclassified to classified position, with exception.

5. Transfer shall not be made from a position not classified under the civil-service act to a classified position: *Provided*, That a person who, by promotion or transfer from a classified position, has entered an unclassified position in any part of the executive civil service other than a position of mere laborer or workman, or to serve under the authority of the General Government as a civilian in the insular possessions under the control of the United States, and has served continuously therein from the date of said promotion or transfer, may be transferred from said unclassified position to the position from which he was so

---

[1] Amended May 29, 1899.

transferred or to any position to which transfer could be made therefrom.[1]

6. Transfer shall not be made from a position outside the District of Columbia to a position within the District of Columbia except upon the certificate of the Commission, subject to the other conditions and provisions of this rule.

Transfer from position outside to position within the District of Columbia.

7. Any person who has been transferred from a classified position to another classified position may be retransferred to the position in which he was formerly employed, or to any position to which transfer could be made therefrom, without regard to the limitations of this rule.

Transfer from one classified position to another classified position.

8. All transfers herein authorized shall be made only after the issuance by the commission of the certificates therefor, except those which may be specifically exempted from such condition by regulation of the commission.

Certificates for transfers.

9. Whenever a person is proposed for transfer from one branch of the service to another branch of the service, and from a part of the service not within the provisions regulating apportionment to a part of the service within said provisions, and the transfer is one which, under the provisions of this rule, may be allowed without examination, such person shall be required, precedent to his transfer, to file a statement under oath setting forth the same facts accompanied by the same certificates or vouchers relating to residence as may be required in an application for examination.

Facts to be set forth in application for transfer.

Rule XI.

1. In pursuance of the requirements of section 7 of the civil-service act, competitive tests or examinations shall, as far as practicable and useful, be established to test fitness for promotion in any part of the civil service of the United States which has been, or may hereafter be, classified under the civil-service act.

Promotions.

2. Regulations to govern promotions shall be formulated by the commission after consultation with the heads of the several departments, bureaus, or offices. It shall be the duty of the head of each department, bureau, or office, when such regulations have been formulated, to promulgate the same, and any amendments or revocations thereof shall be approved by the commission before going into effect.

Commission to formulate details regulating promotions.

---

[1] Amended March 16, 1900.

Commission to designate boards of promotion.

3. The commission shall, upon the nomination of the head of each department, bureau, or office, designate and select a suitable number of persons, not less than three, in said department, bureau, or office, to be members of a board of promotion. In the departments, bureaus, or offices in Washington, and in all other offices, the members of any board of promotion shall not all be adherents of one political party when persons of other political parties are available and competent to serve upon said board.

Promotions before adoption of regulations.

4. Until the regulations here authorized have been approved for any department, bureau, or office in which promotion regulations approved by the commission are not in force, promotions therein may be made from one class to another class which is in the same grade, and from one grade to another grade, upon any test of fitness not disapproved by the commission, which may be determined upon by the promoting officer: *Provided*, That no promotion of a person shall be made, except upon examination provided by the commission, from one class to another class, or from one grade to another grade, if for original entrance to said class or grade to which promotion is proposed there is required by these rules an examination involving essential tests different from or higher than those involved in the examination required for original entrance to the class or grade from which promotion is proposed: *And provided further*, That no promotion of a person shall be made, except upon examination provided by the commission, to a position in which, in the judgment of the commission, there is not required the performance of the same class of work or the practice of the same mechanical trade which is required to be performed or practiced in the position from which promotion is proposed; but a person employed in any grade shall not, because of such employment, be barred from the open competitive examination provided for original entrance to any other grade: *And provided further*, That no promotion of a person shall be made to a class or grade from original entrance to which such person is barred by the age limitations prescribed therefor or by the provisions regulating apportionment: *And provided further*, That nothing contained in this rule or in any regulation made in pursuance thereof shall be so construed as to prevent an appointing officer, in his discretion, from promoting a person who served in the military or naval service of the United States in the late war of the rebellion or in the Spanish-American war,

When examinations are required for promotions.

Employees not barred from open competitive examinations.

Age limitations.

Amendment of Jan. 29, 1900.

and who was honorably discharged therefrom, who has been reinstated in the service in a grade or position below that from which he was separated to a grade or position no higher than that from which he was separated.[1]

RULE XII.

List of all positions and employments to be furnished to commission.

1. In pursuance of the provisions of section 2 of the civil-service act, every nominating or appointing officer in the executive civil service of the United States shall furnish to the commission a list of all the positions and employments under his control and authority, together with the names, designations, compensations, and dates of appointment or employment, of all persons serving in said positions or employments; said list to be arranged as follows: (a) Classified positions not excepted from examination; (b) classified positions excepted from examination; (c) unclassified positions.

Reports of changes in service to be made to commission.

2. Every nominating or appointing officer in the executive civil service shall report in detail to the commission, in form and manner to be prescribed by the commission, all changes, as soon as made, and the dates thereof, in the service under his control and authority, setting forth among other things the following: The position to which an appointment or reinstatement is made; the position from which a separation is made, whether the same was caused by dismissal, resignation, or death; and the position from which and the position to which a transfer or promotion is made; the compensation of every position from which or to which a change is made; the name of every person appointed, reinstated, promoted, transferred, or separated from the service; and every failure to accept an appointment and the reasons therefor.

RULE XIII.

Classification of employees.

The officers and employees in all branches of the classified service of the United States, for the purposes of these rules, shall be arranged in the following classes unless otherwise provided by law:

Class A. All persons receiving an annual salary of less than $720, or a compensation at the rate of less than $720 per annum.

Class B. All persons receiving an annual salary of $720 or more, or a compensation at the rate of $720 or more, but less than $840 per annum.

---

[1] Amended January 29, 1900.

Class C. All persons receiving an annual salary of $840 or more, or a compensation at the rate of $840 or more, but less than $900 per annum.

Class D. All persons receiving an annual salary of $900 or more, or a compensation at the rate of $900 or more, but less than $1,000 per annum.

Class E. All persons receiving an annual salary of $1,000 or more, or a compensation at the rate of $1,000 or more, but less than $1,200 per annum.

Class 1. All persons receiving an annual salary of $1,200 or more, or a compensation at the rate of $1,200 or more, but less than $1,400 per annum.

Class 2. All persons receiving an annual salary of $1,400 or more, or a compensation at the rate of $1,400 or more, but less than $1,600 per annum.

Class 3. All persons receiving an annual salary of $1,600 or more, or a compensation at the rate of $1,600 or more, but less than $1,800 per annum.

Class 4. All persons receiving an annual salary of $1,800 or more, or a compensation at the rate of $1,800 or more, but less than $2,000 per annum.

Class 5. All persons receiving an annual salary of $2,000 or more, or a compensation at the rate of $2,000 or more, but less than $2,500 per annum.

Class 6. All persons receiving an annual salary of $2,500 or more, or a compensation at the rate of $2,500 or more per annum.

Provided, That this classification shall not include persons appointed to an office by and with the advice and consent of the Senate, nor persons employed as mere laborers or workmen; but all positions whose occupants are designated as laborers or workmen and who were, prior to May 6, 1896, and on June 10, 1896, regularly assigned to work of the same grade as that performed by classified employees shall be included within this classification. Hereafter no person who is appointed as a laborer or workman without examination under the civil service rules shall be assigned to work of the same grade as that performed by classified employees.[1]

---

[1] This rule appeared originally as a War Department classification. It was extended to the civil service generally by order of the President dated May 29, 1899.

INDEX.

[The references are to **paragraphs** unless pages are indicated. Articles of war are indicated by their numbers, the letters A. W. following the number of the article.]

Absence (see *Leaves of Absence*):
  leaves of, to officers, 826–828.
  pay during, 826–829.
  without leave, 1393, 32 A. W.
Accepting Bribe, 1565. (See *Bribe.*)
Accountability (see *Accounts*, and *Property Accountability*):
  money, 184–189, 632, 636–643.
  ordnance, 1172–1176.
  property, 1632–1636.
  signal property, 1229.
  volunteer officers, 540.
Accountant. (See *Expert Accountant.*)
Accounting, 632–635.
  failure to render accounts, 648.
  revision, 642.
Accounting Officers (see *Accounts*, and *Treasury Department*):
  advance decisions, 627.
  assignment of claims, 234.
  auditors, 194–214.
  books, papers, etc., accessible to, 108.
  certificate of property charges, 1633, 1634.
  claims, 202, 206, 219–224, 235–244, 362–368.
  compromise of claims, 231.
  Comptroller of the Treasury, 190–193.
  copies of contracts for, 1571.
  powers of attorney, 234.
  prosecution of claims, 235–244.
  purchase of claims, 232.
  rejected appointments, lists of, 11a.
  rendition of accounts to, 185, 187.
  set-off, 233.
  States, claims of for war expenses, 223–230.
  suits for recovery of money, 643.
Accounts (see *Accountability*, *Accounting Officers*, and *Treasury Department*):
  clothing, 751.
  Comptroller of the Treasury, 190–193.
  delinquent disbursing officers, 188.
  examination, 195, 196.
  fiscal year, 184, 635.
  forms, 633.
    prescribed by Comptroller, 191.
  itemized by appropriations, 637.
  line officers, settlement, 215.
  monthly, to be rendered, 185.
  outstanding over three years, 312.
  overpayments, 217.
  paymasters, for bounties, etc., 216, 217.
Accounts—Continued.
  preservation, 204.
  re-examination, 199, 200.
  rendition, 636–641.
  reopening of settled, forbidden, 206.
  revision, 642.
  rules for keeping, 634.
  separate heads of appropriation, 186.
  settlements of, conclusive, 201.
  transcripts of, by auditor, 205.
  transmission, 187, 638–641.
Acquisition of Lands (see *Lands*, and *Public Lands*):
  assent of States, 1595.
  authority for, 1594.
  condemnation, 1597–1599.
  examination of titles, 1593.
  releases, 1596.
  sites for fortifications, 1599.
Acting Hospital Stewards, 914, 920, 924. (See *Hospital Stewards.*)
Additional Paymasters, 793, 794.
Adjutant-General:
  rank, 662, 663.
Adjutant-General's Department (see *Adjutant-General's Office*):
  composition, 662.
  details, 665, 666.
  duties, 667.
  examinations for promotion, 664.
  historical note, p. 257.
  organization, 662; p. 1053.
  promotions, 664.
  recruiting service, 669–679.
  returns, 668.
Adjutant-General's Office (see *Adjutant-General's Department*):
  clerical force, 134.
Adjutants:
  battalion, 1449.
  regimental, 1419, 1423, 1445, 1447.
  squadron, 1425.
Administration of Oaths, 49–51. (See *Oaths.*)
Administrators:
  liability of, 246.
Admiral:
  relative rank, 564.
Advances of Funds, 617, 618. (See *Disbursing Officers*, and *Funds.*)
Advertising. (See *Contracts.*)
  in District of Columbia, 79, 81.

Agents (see *Disbursing Agents*, and *Indian Agents*):
  disbursing, 291-295a.
Aids:
  appointment, 556, 557.
  brigadier-generals, 557.
  lieutenant-general, 556.
  major-generals, 557.
  military secretary, 556.
Alabama:
  rivers in, navigable waters, 1095.
Alaska:
  military telegraph lines in, 1231.
Aliens. (See *Citizenship*, and *Naturalization.*)
Allotments of Pay by Enlisted Men, 871-875.
Allowances:
  baggage, 720, note.
  clothing, 749, 752.
  commutation of quarters, 830-835.
  forage, 740, 741.
  fuel, 738 note; 740.
  Indian scouts, 506.
  native troops, 502-505.
  quarters, 738, note.
  restriction on, 817.
  volunteers, 527, 528.
Altering Clothing (see *Clothing*):
  cost, 756, 757.
American National Red Cross, pp. 1044-1047.
Ammunition:
  selling, 1648.
  wasting, 16 A. W.
Antietam Battlefield, 2415-2422.
  appropriation, 2418.
  condemned cannon, carriages, etc., 2420, 2421.
  Harpers Ferry, marking lines of battle at, 2419.
  locating lines of battle, 2415.
  marking lines of battle, 2417.
  South Mountain, lines of battle, 2419.
  superintendent, 2422.
  tablets, 2416.
Aqueduct. (See *Washington Aqueduct.*)
Aqueduct Bridge:
  rules for use of, 995.
  Washington. (See *Engineer Department.*)
Appointments in Military Service:
  commissions, 273.
  how made, 1454.
  in line of Army, 1454.
  Marine Corps, 421-424.
  notification of, 11.
  recess, 8, 9.
  volunteer forces, 521.
Appointments to Office, 7-9 (see *President*, *Civil Service*, and *Recess Appointments*):
  preference to honorably discharged soldiers, etc., 143.
  recess, 8, 9, 163, 164.
  rejected, lists of, 11a.
  temporary, restriction on, 18, 19.
Appropriations (see *Treasury Department*):
  amount of, how determined, 275, 623.
  application, 271, 620.
  balances, application of, 279-282.
  balances, disposition of, 624.
  contingent, restriction on, 274.
  contracting beyond, 659.
Appropriations—Continued.
  expenditures not to exceed, 272.
  expenses of commissions and inquiries, 273.
  fiscal year, 184.
  permanent, 276.
  restriction on expenditures, 619.
  statement of, in estimates, 268.
  statements of prior, in estimates, 208.
  unexpended, application of, 279-282.
Armories (see *Ordnance Department*):
  annual accounts of expenditures, 1193.
  bonds, by whom given, 1192.
  enticing away workmen, etc., 1197.
  establishment, 1190.
  exemption of employees from jury duty, 1190.
  inventions, expenditures on, prohibited, 1200.
  leave of absence to employees, 1196.
  misconduct of employees, 1198.
  magazine small arms, 1202.
  officers, 1190.
  organization, 1190.
  pay of officers, clerks, etc., 1191, 1192.
Arms (see *Armories*, *Militia*, and *Ordnance Department*):
  damages to, etc., 897, 1638.
  issues to Executive Departments, 1204.
  issues to Territories, 1780, 1781.
  losing, spoiling, etc., 1647.
  magazine, manufacture, 1202.
  replacing ordnance issued to States, 1203.
  selling, losing, etc., 1649.
Army (see *Regular Army*, and *Volunteer Army*):
  appointments, pp. 1060-1062.
  artillery corps, 1429-1444.
  cavalry, 1419-1428.
  commander in chief, 2.
  composition, 500-508.
  details, p. 1060.
  engineer troops, 1452.
  enlisted strength, 507, 508.
  enlisted strength of, restriction, p. 1064.
  government of, in the field, pp. 1074-1078.
  increase of 1899, 515, 516.
  increase of 1901, how effected, 1454.
  Indian scouts, 506.
  infantry, 1445-1451.
  line of, 962, 1419-1429, 1445-1451; pp. 1048, 1049, 1051. (See *Line of the Army.*)
  maximum strength, 1453.
  native troops, Philippine Islands, 501-504; p. 1064.
    Porto Rico, 505; p. 1065.
  payments to troops, 800-804.
  peace establishment, 499-508.
  promotions, p. 1060.
  reorganization of, act for, pp. 1048-1066.
  restriction on enlisted strength, 507, 508; p. 1064.
  strength of, restriction, p. 1064.
  strength, enlisted, 507, 508.
    volunteer forces, 543, 545, 546.
  vacancies in line, how filled, 1454.
  war establishment, 509-514.
Army Medical Museum, 940.
Army Register:
  distribution, 490, 491.
  House of Representatives, furnished to, 491.
  lineal rank to appear in. 493.

Army Register—Continued.
- pay, schedule of, to appear, 492.
- rank of officers to appear, 493, 494.
- Senate, furnished to, 490.
- volunteer rank, 494.

Army Regulations:
- authority to make, 487, 488.
- codification, 489.
- publication, 489.

Army Service Men, 1509–1511.

Army Transports (see *Transportation*):
- rations, 770.

Army War College, 1514.

Arraignment, 1808; 89 A. W. (See *General Courts-Martial.*)

Arrears of Business (see *Reports*):
- reports, 53, 88.

Arrest:
- commissioned officers, 1782, 1784, 1785.
- intruders on Indian reservations, 2004–2008.

Arsenals (see *Armories*):
- abolishment of, by Secretary of War, 1194.

Articles of War (see *Courts-Martial*, and *Military Tribunals*):
- absence from parade, etc., 33 A. W.
- absence without leave, 32 A. W.
- accountability for arms, etc., 10 A. W.
- accouterments, losing, spoiling, etc., 17 A. W.
- accuser or prosecutor, 72, 73 A. W.
- accused, arraignment, 89 A. W.
  - counsel, 90 A. W.
  - copy of charges, 71 A. W.
  - entitled to copy of record, 114 A. W.
- affirmation, 92 A. W.
- alarms, false, 41 A. W.
- allowing duels, 27 A. W.
- ammunition, wasting, 16 A. W.
- application to Marine Corps, 446.
- application to marines, 445.
- approval of sentences, 104–109, 111 A. W.
- arrest of officers, 65 A. W.
  - duration of, 70, 71 A. W.
  - release, 70, 71 A. W.
- behavior of members, 87 A. W.
- branding, etc., 98 A. W.
- camp, retainers to, 63 A. W.
- challenges—
  - to duels, 26 A. W.
  - to members, 88 A. W.
- charges, copy to be furnished accused, 71 A. W.
- civil authority, delivery of offender to, 59 A. W.
- command when different corps join, 122 A. W.
- commanders not to be interested in sale of victuals, etc., 18 A. W.
- commanding officer, disrespect to, 20 A. W.
- conduct prejudicial to good order, etc., 62 A. W.
- conduct unbecoming an officer and gentleman, 61 A. W.
- confinement of enlisted men, 66–70 A. W.
- confirmation of sentences, 104–109, 111 A. W.
- Congress, disrespectful words concerning, 19 A. W.
- contempts of court, 86 A. W.
- contemptuous words, 19 A. W.
- continuances, 93 A. W.
- courts of inquiry, 116–121 A. W.
  - authentication of proceedings, 120 A. W.

Articles of War—Continued.
- courts of inquiry—continued.
  - composition, 116 A. W.
  - constitution, 115 A. W.
  - evidence, proceeding as, 121 A. W.
  - oaths of members and recorder, 117 A. W.
  - opinion, when furnished, 119 A. W.
  - record as evidence, 121 A. W.
  - witnesses, 119 A. W.
- cowardice, 42 A. W.
- crimes during war, insurrection, etc., 58 A. W.
- damages to stores, 15 A. W.
- death sentences, 47, 96, 105, 111 A. W.
- deceased officer, effects, 125, 127 A. W.
- deceased soldier, effects, 126, 127 A. W.
- delivery of offender to civil authority, 59 A. W.
- depositions, 91 A. W.
- desertion, 47–51 A. W.
  - advising, 51 A. W.
  - limitation in, 103 A. W.
  - penalty, 47, 48 A. W.
  - resignation, 49 A. W.
- destruction of property, 55 A. W.
- discharges, 4 A. W.
- discipline—
  - conduct prejudicial to, 62 A. W.
  - maintenance of, on march and in quarters 54–56 A. W.
- dismissal of officer, 99, 106, 107, 111 A. W.
- disrespectful words, 19, 20 A. W.
- disrespect to commanding officer, 20 A. W.
- divine service, misconduct at, 52 A. W.
- drunkenness on duty, 38 A. W.
- duels, 26–28 A. W.
- duty, drunkenness on, 38 A. W.
  - hiring, 36 A. W.
- embezzlement, etc., 60 A. W.
- enacting clause, sec. 1342 R. S., p. 964.
- enemy, corresponding with, 46 A. W.
  - relieving, 45 A. W.
- enlisting without discharge, 50 A. W.
- enlistments unlawful, penalty, 3 A. W.
- false alarms, 41 A. W.
- false certificates, 13 A. W.
- false muster, 5, 14 A. W.
- false returns, 8 A. W.
- field-officers courts (see *Regimental Courts-Martial*), 80, 83 A. W.
  - approval of proceedings, 104, 109 A. W.
  - composition, 80 A. W.
  - constitution, 80 A. W.
  - jurisdiction, 80, 83 A. W.
  - limits of punishment, 83 A. W.; 1838; p. 1067.
  - pardon and mitigation, 112 A. W.
  - sentences, sec. 1342 R. S., p. 964, and 83 A. W.
- flogging, 98 A. W.
- fraud, embezzlement, etc., 60 A. W.
- furlough, 11 A. W.
- garrison courts-martial (see *Summary Courts*), 82 A. W.
  - approval of proceedings, 104, 109 A. W.
  - behavior of members, 87 A. W.
  - composition, 82 A. W.
  - constitution, 82 A. W.
  - judge-advocate, 74, 90 A. W.
  - jurisdiction, 82, 83 A. W.
  - limits of punishment, 83 A. W.; 1838; pp. 965, 1067.

Articles of War—Continued.
  garrison courts-martial—continued.
    oaths, 84, 85 A. W.
    pardon and mitigation, 112 A. W.
    sentences, 83 A. W.; 1838; p. 1067.
  general courts-martial, 72, 73 A. W.
    approval of sentences, 104–108 A. W.
    behavior of members, 87 A. W.
    challenges, 88 A. W.
    composition, 75–79 A. W.
    confinement in penitentiary, 97 A. W.
    constitution, 72, 73 A. W.
    continuances, 93 A. W.
    depositions, 91 A. W.
    dismissal of officers, 99, 105, 106, 111 A. W.
    execution of sentences, 104–109, 111, 112 A. W.
    general officers, sentences respecting, 108 A. W.
    inferior in rank, 79 A. W.
    judge-advocates, 74, 84, 90 A. W.
    limits of punishment, 1838; pp. 965, 1067.
    number of officers, 75 A. W.
    oaths, 84, 85 A. W.
    order of voting, 95 A. W.
    pardon and mitigation, 112 A. W.
    proceedings, final disposition, 113 A. W.
    suspension of officers' pay, 101 A. W.
    voting, 95 A. W.
  general officers, sentences respecting, 108 A. W.
  good order on march, etc., 54 A. W.
  gratification or reward for muster, 6 A. W.
  hiring duty, 36 A. W.
  horses, losing, spoiling, etc., 17 A. W.
  judge-advocates, 74, 84, 85, 90, 92, 113 A. W.
  limitation of prosecution—
    in desertion, 103 A. W.
    in general, 103 A. W.
  limits of punishment, 83 A. W.; 1838; p. 1067.
  marines, when subject to, 445.
  marking, tattooing, etc., 98 A. W.
  members of courts-martial, 75–79 A. W.
  military discipline, conduct prejudicial to, 62 A. W.
  militia subject to, 2022; 64 A. W.
  misbehavior before enemy, 42 A. W.
  muster, false, 5, 14 A. W.
  musters, 5, 6, 13, 14 A. W.
  mutiny, 22, 33 A. W.
  National Home, etc., inmates subject to, 2332.
  neglect of duty, 62 A. W.
  neglects, etc., prejudicial to military discipline, 62 A. W.
  oath of enlistment, 2 A. W.
  oaths, 2, 84, 85, 92 A. W.
    enlistment, 2 A. W.
    judge-advocate, 85 A. W.
    member, 84 A. W.
    witness, 92 A. W.
  oaths, profane, 53 A. W.
  officer and gentleman, conduct unbecoming, 61 A. W.
  officers to keep good order in commands, 54 A. W.
  officers to subscribe to, 1 A. W.
  officers, triable by general courts-martial only, 79 A. W.
  one mile from camp without leave, 34 A. W.

Articles of War—Continued.
  order to be kept in quarters and on the march, 54 and 55 A. W.
  pardon and mitigation, 112 A. W.
  penitentiaries—
    confinement in, 97 A. W.
    sentences to, 97 A. W.
  persons subject to—
    Army of the United States, 1, 2, 64 A. W.
    inmates National Home, 2332.
    inmates Soldiers' Home, 2283.
    marines serving with land forces, 78 A. W.
    militia, in time of war, 64 A. W.
    persons serving with armies in field, 63 A. W.
    Regular Army, 1, 2 A. W.
    retainers to camp, 63 A. W.
    retired enlisted men, 1380, note.
    retired officers, 1319.
    volunteers, 64 A. W.
  pleas, 89 A. W.
  President, contemptuous or disrespectful words concerning, 19 A. W.
  prisoner—
    charges against, 66 A. W.
    confinement of, 66–69 A. W.
    escape of, 69 A. W.
    receiving by provost-marshal, etc., 67 A. W.
    release of, 69 A. W.
    report of, 68 A. W.
  profane oaths, 53 A. W.
  property—
    captured, 9 A. W.
    returns, 10 A. W.
  publication of—
    Articles of War, 128 A. W.
    sentences, 100 A. W.
  punishment, limits of, 83 A. W.; 1838; p. 1067.
  punishments prohibited, 98 A. W.
  quarrels, frays, etc., 24 A. W.
  quarters, lying out of, 31 A. W.
  quelling mutiny, 23 A. W.
  quitting guard, 40 A. W.
  rank of regular and volunteer officers, 122, 123 A. W.
  read, once in six months to regiments, etc., 128 A. W.
  records of general courts-martial forwarded to Judge-Advocate-General, 113 A. W.
    party entitled to copy, 114 A. W.
  recruits, articles to be read to, 2 A. W.
  redress of wrongs—
    enlisted men, 30 A. W.
    officers, 29 A. W.
  regimental courts-martial (see *Field-Officers, Courts*), 81 A. W.
    appeals from, 30 A. W.
    approval of proceedings, 104, 109 A. W.
    behavior of members, 87 A. W.
    composition, 81 A. W.
    constitution, 81 A. W.
    judge-advocate, 74, 81, 84, 85, 90 A. W.
    jurisdiction, 81, 83 A. W.
    limits of punishment, 83 A. W.; 1838; p. 1067.
    oaths, 84, 85 A. W.
    pardon and mitigation, 112 A. W.
    redressing wrongs, 30 A. W.
    sentences, 83 A. W.; 1838; p. 1067.

Articles of War—Continued.
- regimental returns, 7 A. W.
- relieving enemy, 45 A. W.
- report of prisoners, 68 A. W.
- reproachful speeches, 25 A. W.
- retainers to camp, 63 A. W.
- retreat, failing to retire to camp at, 35 A. W.
- returns, false, 8 A. W.
  - regimental, 7 A. W.
- safeguard, forcing of, 57 A. W.
- second trial for same offense, 102 A. W.
- sentences, 96–101, 104–107, 111, 112 A. W.
  - approval and confirmation, 104–109 A. W.
  - death, 47, 96, 111 A. W.
  - dismissal of officer, 99, 107, 111 A. W.
  - flogging, 98 A. W.
  - general officers, 108 A. W.
  - limits of, 83 A. W.; 1838; pp. 965, 1067.
  - pardon and mitigation, 112 A. W.
  - penitentiary, 97 A. W.
  - publication, 100 A. W.
  - suspension of, 111 A. W.
  - suspension of pay, etc., 101 A. W.
- sleeping on post, 39 A. W.
- Soldiers' Home, 2283.
- soldiers subject to, pp. 964, 965.
- spies, sec. 1343 R. S.; p. 1026.
- standing mute, 89 A. W.
- stores captured, 9 A. W.
- striking superior officer, 21 A. W.
- surrender, compelling of, 43 A. W.
- suspension of officers' pay, 101 A. W.
- suspension of sentence, 111 A. W.
- troops, Articles of War, to be read to, 128 A. W.
- troops, subject to Articles of War, 64 A. W.
- twice in jeopardy, 102 A. W.
- victuals, sale of, commanding officers not to be interested in, 18 A. W.
- violence to persons bringing in provisions, 56 A. W.
- voting, order of, 95 A. W.
- watchword, disclosure of, 44 A. W.
- witnesses—
  - affirmation, 92 A. W.
  - attendance, 1810.
- oath, 92; 118 A. W.
- wrongs, redress of, 29; 30 A. W.
  - officers, 29 A. W.
  - soldiers, 30 A. W.

Artificial Limbs:
- allowance, 942.
- commutation, 944–946.
- renewal, 943.
- transportation to procure, 947–949.
- trusses, 950–952.

Artillery (see *Artillery Corps*, and *Coast Artillery*):
- barracks for coast, 735.
- coast, 1430.
- field, 1430.
- horses, purchases of, 730.

Artillery Corps (see *Artillery*, and *Coast Artillery*):
- bands, 1441.
- barracks for coast, 735.
- coast, 1430.
- coast artillery, 1437, 1438.
- companies, 1437, 1438.
- composition, 1431.
- details, 1434.

Artillery Corps—Continued.
- electrician sergeants, 1443.
- field artillery, 1430, 1439, 1440.
- gunners, increased pay, 1444.
- horses, purchases of, 730.
- increase of, how effected, 1433.
- officers on one list, 1432.
- organization, 1429; p. 1049.
- restriction on enlisted force, 1442.
- veterinarians, 1435, 1436.

Artillery School, 1516, 1517.

Artisans, extra-duty pay, 742, 745.

Assignment of Claims, 234. (See *Claims.*)

Assignments:
- pay of enlisted men, prohibited, 898.
- pensions, 2235, 2236.

Assistant Secretary of War, 118.

Assistant treasurers, 286.

Atlantic and Pacific Railroad, 2066.

Attorneys:
- oath, 235, 236.
- powers of, 234, 628.
- prosecution of claims, 235–244.
- rules respecting, 244.

Attorney-General (see *Attorney-General's Office*, and *Department of Justice*):
- cases, conduct of, 340.
- counsel, attendance of, 343, 344.
- Court of Claims, 362–417.
- duties, 332–345.
- habeas corpus, 346–361.
- land titles, examination of, 334, 335.
- office, 332.
- opinions, 336–339.
- procurement of legal services, 342.
- publication of opinions, 345.
- restriction on employment of legal services, 342.

Attorney-General's Office (see *Department of Justice*):
- duties, 334–345.
- examination of titles, 334, 335.
- legal services, 342.
- opinions, 337–341.

Auditors (see *Accountability*, *Accounting Officers*, and *Accounts*):
- balances, certificates of, 198.
- books, papers, etc., to be accessible to, 214.
- decisions reported to Comptroller, 203.
- discharge certificates, return of, 218.
- duties, 194–214.
- funds, requisitions for, 209.
- paymasters' accounts, 216, 217.
- preservation of accounts, 205.
- re-examination of accounts, 199.
- re-opening of settled accounts forbidden, 206.
- revision of decisions by Comptroller, 203.
- settlements of accounts, 201, 206.
- transcripts of accounts as evidence, 205.

Badges:
- Corps, etc., 1360–1363.

Baggage (see *Transportation*):
- allowance of, 720, note.
- transportation of, 720, note.

Bakeries (see *Post Bakeries*):
- purchases for, 714.

Balances (see *Appropriations*, and *Treasury Department*):
- unexpended, application, 279–282.

Bands:
  artillery corps, 1441.
  cavalry, 1424.
  infantry, 1448.
  Military Academy, 1508.
Banker:
  unlawful receipt of money by, 654, 655.
Barracks (see *Posts*):
  coast artillery, 735.
  construction, 734.
  restriction on expenditures, 737, 1623–1625.
  seacoast artillery, 1625.
Battalions, 1445, 1449.
Board of Ordnance and Fortification, 1209–1217. (See *Ordnance Department.*)
  civilian member, 1213.
  composition, 1209–1213.
  duties, 1209.
  expenditures, 1212.
  experiments, 1215, 1216.
  per diem to officers, 1217.
  restriction on membership, 1214.
  right to all inventions, 1216.
  tests, 1209, 1215, 1216.
Bonds (see *Disbursing Officers*, and *Sureties*):
  disbursing agents, 295.
  disbursing clerks, 24.
  disbursing officers, 592–605.
  examination, 602, 603.
  increase, 593.
  liability of sureties, 604, 605.
  officers of armories, 1192.
  release of sureties, 604, 605.
  renewal, 602, 603.
  security companies as sureties, 594–601.
Bond-Aided Railroads, 722, 725.
Bookkeeping and Warrants:
  division of, 210.
Book of Estimates, 62–78. (See *Estimates.*)
Books of Prints:
  purchases of, 57.
Books of Reference:
  purchases of, 58.
Bounty for Enlistments, 677.
Bowman Act (see *Court of Claims*), 396–402.
Branding Prohibited, 1833.
Brevet Rank (see *Brevets*):
  date, 1344, 1345.
  honorary, 1346.
  uniform, 1349.
Brevets (see *Brevet Rank*):
  assignments to command, 566.
  assignments to duty, 1347, 1348.
  date, 1344, 1345.
  increase of pay on, forbidden, 811.
  Marine Corps, 428.
  power to confer, 1342, 1343.
Bribe (see *Bribery*):
  accepting of, penalty, 657, 658, 1565.
  offering, penalty, 1564.
Bribery, 657, 658, 1564, 1565.
Bridge Equipage:
  prescribed by Chief Engineer, 971.
Bridges over Navigable Waters, 1114–1117.
Brigadier-General (see *Staff Departments*):
  historical note, p. 203.
  relative rank, 564.
Buildings (see *Public Buildings*, and *Public Buildings and Grounds*):
  restriction on expenditures, 1549.
  report of, rented, 73, 74.
  sites for, 1524.
Bureau Officers. (See *Chiefs of Bureaus.*)
Burial (see *Deceased Officers*):
  deceased enlisted men, 1416–1418.
  officers, 1415–1417.
Cadets (see *Military Academy*):
  Age, 1481.
  allowances, 1485.
  appointments, 1479–1481.
  courts-martial for trial of, 1495.
  deficiency, 1494.
  graduation, 1486–1488.
  instruction, 1489–1494.
  liability to duty, 1490.
  oath, 1483, 1484.
  organization, 1489.
  pay, 1485, 1488.
  qualifications, 1481, 1482.
California Débris Commission, 1049–1081.
  composition, 1050.
  débris fund, 1073–1080.
  duties, 1052–1055.
  establishment, 1049.
  hydraulic mining, 1056–1072.
  report, 1055.
  State appropriations, 1078–1080.
  travel expenses, 1081.
California:
  treatment of insane in asylums, 2348.
Camps:
  post-offices at, 329–331.
  sites for, p. 1064.
Canals (see *River and Harbor Works*):
  regulations prepared by Secretary of War, 1102.
    to be posted, 1113.
  tolls not to be levied, 1111.
  use of, to be regulated by Secretary of War, 1112.
Carts:
  purchase of, 729.
Captains (see *Rank*):
  relative rank, 1564.
Captains (Navy):
  relative rank, 564.
Cavalry (see *Cavalry Regiments*, and *Native Troops*):
  bands, 1424.
  colored regiments, 1420.
  dismounted, 1421.
  horses, purchases of, 730, 732.
  horses, restriction on number, 732.
  increase in strength, 1428.
  organization, 1419.
  Porto Rican battalion, p. 1065.
  regiment, 1419–1423; p. 1048.
  regimental staff, 1422, 1423.
  squadron staff, 1425.
  troops, 1427.
  veterinarians, 1426.
Cavalry and Light Artillery School, 1519.
Cavalry Regiment (see *Cavalry*):
  band, 1424.
  colored regiments, 1420.
  composition, 1419.

Cavalry Regiment—Continued.
  details, 1423.
  dismounted service, 1421.
  increase in strength, 1428.
  organization, 1419.
  squadron, 1419, 1425.
  staff, 1419, 1423.
  troops, 1427.
  veterinarians, 1426.
Central Pacific Railroad, 2065.
Certificates of Merit, 1358, 1359.
Certificates of Residence (see *Civil Service*), 154.
Challenges:
  members of court-martial, 1802; 88 A. W.
  to duels, 26–28 A. W.
Chaplains:
  age limit in appointments, 1260.
  appointments, 1258, 1259; p. 1052.
  assignments, 1262.
  duties, 1263–1265.
  Military Academy, 146.
  qualifications, 1260.
  reports, 1265.
  school teachers, 1264.
Charges and Specifications, 1786. (See *General Courts-Martial.*)
Charts (see *Maps*):
  sale of, 140.
Checks (see *Drafts*, and *Pay Department*):
  duplicate, 631.
  lost, 631.
  outstanding, 309–311.
  payment, 311.
  presentation, 311, 630.
Chickamauga and Chattanooga National Military Park:
  acquisition of lands, 2357, 2359.
  care of park, 2363.
  commissioners, appointment, 2360.
    duties, 2361.
  designation, 2357.
  donations of cannon, balls, etc,, 2375.
    lands for roads, 2374.
  establishment, 2357.
  extent, 2356, 2365–2368.
  injuries to monuments, trees, etc., 2375.
  leases, 2373.
  location of troops, 2362.
  monuments, 2369–2372.
    construction, 2371.
    erection, 2370.
    location, 2372.
    restriction on erection of, 2370.
    State, 2369.
  preliminary work, 2364.
  purchase of lands, 2366–2368.
  reduction of area, 2365.
  right given for Chattanooga Rapid Transit Railroad, 2377.
  State monuments, 2369.
  supervision by Secretary of War, 2358.
Chief Clerks (see *Clerks, Executive Departments*, and *Executive Departments*):
  duties, 21–23.
  oaths, 49, 50.
  reports, 22, 23.
Chiefs of Bureaus (see *Heads of Bureaus*):
  absence of, performance of duty, 14, 16–19, 121.
Chief of Engineers (see *Engineer Department*):
  annual inventory, 989.
  Aqueduct Bridge, rules for use of, 994.
  books from Congressional Library, 977.
  furniture in Executive Mansion, 988.
  Potomac Park, 981–983.
  prescribes forms, etc., of pontoons, arms, tools, etc., 971.
  public buildings and grounds, 978–994.
  report of public buildings, etc., 987.
  Washington Aqueduct, 995–1010.
  Washington Monument, 990–992.
Chief of Ordnance (see *Ordnance Department*):
  duties, 1166–1168.
  returns, prescribed by, 1173.
Chief Signal Officer (see *Signal Corps*, *Signal Department*, and *Signal Office*):
  accountability for property, rules for, 1228.
  duties, 1227–1229, 1231.
  regulations, 1228.
  telegraph lines, 1227, 1231.
Christmas Day, 46.
Citizenship (see *Naturalization*):
  allottees of Indian lands, 1892.
  children born abroad, 1871.
  definition, 1870.
  evasion of draft, 1876.
  expatriation, 1877.
  forfeiture by desertion, 1397, 1398, 1874, 1875.
  married women, 1872.
  naturalization, 1880–1891.
  persons born in Oregon, 1873.
Civil Employees (see *Civil Service*, and *Employees, Civil*):
  rations, 771, note.
  restriction on employment, 748.
Civil Engineers, 973–975. (See *Engineer Department.*)
Civil Pension Roll:
  prohibited, 30.
Civil Rights (see *Employment of Military Force*):
  enforcement, 2051–2065.
Civil Service (see *Civil Service Commission*):
  assessments, political, 172.
  contributions, soliciting of, forbidden, 173–177.
  commission, 146.
  examinations for appointment, 147.
    promotion, 150.
  family, members of, restriction, 152.
  frauds in examination, 149.
  intoxicating liquors, users of, barred, 151.
  offenses in connection with, 171–179.
  recommendations by members of Congress prohibited, 153.
  regulations for admission to, by President, 142.
  restrictions on appointments, 151–153.
  soldiers honorably discharged, preference to, 143.
Civil Service Commission (see *Civil Service*):
  appointment, 146.
  chief examiner, 148.
  duties, 147.
  examinations for appointment, 147.
    promotion, 147, 150.
  frauds in examination, 149.

Claims (see *Accounting Officers, Treasury Department*, and *Court of Claims*):
  adjusted in Treasury, 219.
  assignments, 234, 628.
  compromise of, 231.
  disloyal persons, 237.
  examination, 202.
  false, penalty, 239, 240.
  limitation, 230, 238.
  officers not to be interested in, 656.
  powers of attorney, 234.
  property lost, 221.
  prosecution of, 235–244.
  prosecution of, before Executive Departments, 110–116.
  purchase of, or execution, 232.
  reference to Court of Claims, 366.
  report of, allowed, 220.
  reports of, 70.
  set-off, 233.
  settled, not to be reopened, 206.
  States, reimbursement of war expenses, 223–230.
  war with Spain, 137.
Clerks, Executive Departments (see *Executive Departments*, and *Salaries*):
  appointment, 25.
  below fair standard of efficiency, report of, 78.
  chief, 21–23.
  classification, 32.
  department headquarters, 572, 573.
  details, 35.
  details from outside District of Columbia, 28.
  details, reports of, 77.
  disbursing, 24.
  distribution, 35.
  examination, 33.
  extra compensation, 40, 41.
  incapacitated, restriction, 31.
  leaves of absence, 43–45.
  payments to, 27.
  rates, 38.
  reduction in grade, 36, 37.
  reduction of force, preference in, 145.
  report of, 87.
  restriction on appointment, 26, 27.
  restrictions on employment, 26–31.
  restrictions on salaries, 38–42.
  retired officers, forbidden, 1325.
  sick leaves, 43, 44.
  temporary, 39.
  women, employment of, 34.
Clerks and Messengers at Headquarters:
  appointment, 573.
  assignment, 573.
  employment, 573.
  number, 572.
  pay, 572.
Clothing (see *Quartermaster's Department*):
  allowances, 752.
  allowance prescribed by President, 749.
  altering, 756, 757.
  altering, stoppages for, 891, 892.
  balances, 753.
  cost of altering, 756, 757.
  gratuitous issues, 750.
  purchases, 717.
  replacing gratuitous issues, 750.
Clothing—Continued.
  returns, 751.
  sale of, forbidden, 754.
Coast Artillery, 1430, 1437, 1438. (See *Artillery*, and *Artillery Corps*.)
Collectors:
  deposits of funds, 299, 300.
  to act as disbursing agents, 291.
College Details (see *Retired Officers*):
  active list, details from, 1288, 1289.
  issues of ordnance, etc., 1296.
  restriction on details, 1288, 1289.
  retired list, details from, 1290–1295.
Colleges:
  issues of Ordnance and Military Stores to, 1296.
Colonels:
  relative rank, 564.
Colored Regiments (see *Army*):
  cavalry, 1420, 1421.
  chaplains, 1264.
  infantry, 1446.
Colors (see *Flags*):
  volunteer regiments, 542.
Command:
  brevet assignments, 566.
  detachments, 561; 122 A. W.
  engineer officers, 567.
  Medical Department, 913.
  medical officers, 568.
  militia officers, 563.
  pay of, increased, 814, 815.
  paymasters, 569.
  regular officers, 562.
  restrictions on, 562–569.
  volunteer officers, 562.
Commander (Navy):
  relative rank, 564.
Commander in Chief, 2.
Commanding General:
  performance of duties of Secretary of War, 16.
Commercial Statistics, 1107.
Commissions, 1273.
  delivery, 10.
  expenses of, 273.
Commissioned Officers:
  acceptance of civil office, 1332.
  additional second lieutenants, 1487.
  administration of postmasters' oath, 314, 315.
  advances of pay, 812, 813.
  aids, 556, 557.
  appointments—
    cadets, 1267, 1268.
    civil life, 1267, note.
    enlisted men, 1269.
    in volunteers, 521, 530–534.
  arrest, 1782, 1784, 1785.
  assignments to regiments, 1283.
  baggage, allowances of, 720, note.
  brevets, 1342–1349.
  chaplains, 1258–1266.
  civil works, not to be employed on, 1331.
  claims for property lost, 221 222.
  claims, not to be interested in, 656.
  commissions, 1273.
  commutation of quarters, 830–835.
  cooking, supervision of, 788.
  deceased officers, 1339–1341.

Commissioned Officers—Continued.
  details to colleges, 1288–1296.
  details to the staff, 580–582, 1285.
  dismissal of officers, 1328–1330, 1834, 1835.
  examinations for promotion, 583–588, 1274–1277.
  examination of enlisted men for appointment, 1278–1282.
  funeral expenses, 1341. (See *Deceased Officers.*)
  general officers, 555–560.
  horses, transportation of, 720, note.
  increased pay for foreign service, 816.
    higher command, 814, 815.
  increased pay in time of war, 513.
  Indian agents, details as, 1333, 1903, 1904.
  leaves of absence, 1286, 1287.
  medals of honor, 1356, 1357.
  monthly payments to, 836.
  mounted pay, 810.
  pay, 807–829.
  promotions, 1271, 1272.
  quarters in kind, 738.
  relative rank, 564.
  resignations, 1326, 1327.
  retired pay, 824, 825.
  retirement, 1297–1305.
  retiring boards, 1306–1325.
  sales of subsistence to, 778–784.
  service in volunteers, 521, 530–534.
  sick leaves, 1286.
  supernumeraries, discharge of, 1334.
  suspension, 1836.
  transfers, 1284.
  transportation, 721–725.
  transportation in kind, 722–725.
  travel allowances, 837–849.
  travel pay on discharge, 850, 851, 1336–1338.
  witnessing issues of annuities, 1931.
Commodores:
  relative rank, 564.
Commutation:
  artificial limbs, 944–946.
Commutation of Quarters (see *Quarters*):
  absent officers, 739.
  allowance, 830.
  duty without troops, 831.
  officers detailed abroad, 835.
  rates, 832, 833.
  temporary absence, 834.
Commutation of Rations, 776, 777, 789, 791.
Company Commander:
  property returns, 1640.
Company Cooks (see *Cooking*):
  artillery, 1438, 1440.
  bands, 1424, 1441.
  cavalry, 1424, 1427.
  engineers, 1457.
  infantry, 1448, 1450.
  pay, 1457.
  signal corps, 1224.
Compromise of Claims, 231.
Comptroller of the Treasury (see *Accounting Officers*, and *Accounts*):
  advance decisions, 627.
  binding character of decisions, 192.
  decisions in advance of payment, 192.
  duties, 190–193, 211.
  forms of accounts, 191.
Comptroller of the Treasury—Continued.
  office, 190.
  particular accounts, settlement of, 193.
  revision of decisions of auditors, 203.
  suits for the recovery of money, 643.
  suits to recover balances, 250.
  warrants, countersigned by Comptroller, 209.
Confinement:
  enlisted men, 1783.
Congress:
  franking privilege, 322–325.
  journals of, in evidence, 1823.
Consular Records as Evidence, 1824.
Contempt of Court, 1807; 86 A. W. (See *General Courts-Martial.*)
Contingent Funds (see *Appropriations*):
  clerical compensation not payable, 55.
  expenditures, 54–58.
  law books, 58.
  military academy, 1506, 1507.
  newspapers, 56, 57.
  periodicals, 58.
  reference books, 58.
  reports of expenditure, 59, 60.
  restrictions on expenditure, 54–58.
Continuous Service Pay, 869, 870, 1375.
Continuances, 1803; 93 A. W.
Contract Surgeons, 902. (See *Medical Department.*)
Contracts (see *Purchases*):
  advertisements, 1527, 1528.
  buildings, erection and repair, 1522.
  control of Secretary of War, 1520.
  copies for returns office, 1567–1571.
  copy for Auditor for War Department, 1571.
  execution, 1539–1541.
  envelopes for Executive Departments, 328.
  general provisions, 1520–1528.
  how made, 1526.
  land purchases, 1523, 1524.
  members of Congress not to be interested in, 178.
  not to exceed appropriations, 1623.
  officers in connection with, 1558–1566.
  preparation, 1539–1541.
  preparation and execution, 1539–1541.
  river and harbor works, 1104–1106.
  stationery, restriction on, 1556.
  subsistence, 1552.
  unauthorized, prohibited, 1521.
  volunteer services, 1525.
Contracting Beyond Appropriation, 659.
Contributions:
  change of rank, 174.
  political, 172–177.
  presents, 179.
  requesting, 172–177.
  soliciting, 172–177.
Conversion:
  evidence, 653.
Cooking (see *Company Cooks*):
  supervision of, by officers, 788.
Cooks. (See *Company Cooks.*)
Corps Badges:
  wearing of, 1360–1363.
Correspondence (see *Franking Privilege*):
  penalty envelopes, 100, 320–327.

Court of Claims (see *Claims*):
  acknowledgments, 374.
  aliens, 371.
  attendance of witnesses, 384.
  Bowman Act, 396–402.
  claims, 363, 366, 369, 370, 396–417.
  commissioner to take testimony, 379, 380.
  cross-examination of witnesses, 385.
  fees of commissioner, 387.
  final judgments a bar to jurisdiction, 395.
  fraud, effects, 388.
  interest on judgments, 392, 393.
  judgments, 364, 368, 391, 394, 395.
  jurisdiction, 362–366, 396–417.
  limitation on jurisdiction, 372.
  loyalty of claimant, 376, 377.
  new trials, 389, 390.
  oaths, 374, 386.
  payment of judgments, 391–394.
  petition, 375, 376.
  private claims before Congress, 303.
  procedure, 367, 373–395.
  rules of practice, 373.
  testimony, how taken, 379, 380, 383.
  Tucker Act, 403–417.
  witnesses, 378–386.
Courts of Inquiry, 1863–1869.
  composition, 1864; 116 A. W.
  constitution, 1863; 115 A. W.
  oaths, 1865; 117 A. W.
  opinion, when given, 1867; 119 A. W.
  record, 1868, 1869; 120, 121 A. W.
    as evidence, 1869; 121 A, W.
  witnesses, 1866; 118 A. W.
Courts-Martial (see *General Courts-Martial*):
  marine officers, 446.
  Military Academy, 1495.
Credit Sales, 764.
Criminal Offenses:
  consideration for obtaining office, 178.
  political assessments, 172–177.
Cuba:
  military occupation of, 2112.
Cuivre River:
  Missouri, 1097.
Cullum Memorial, 1572.
Cumulative Leaves, 1287.
Dams in Navigable Waters, 1115.
Death Sentences, 1832; 47, 96, 105, 111 A. W.
Débris Commission (see *California Débris Commission*):
  California, 1049–1081.
Debtors:
  discharge of, 248, 249.
Debts Due United States:
  priority of, 245–247.
  recovery of, 197.
  tender, 305–308.
Deceased Officers (see *Burial*):
  effects, 1339, 1340, 1415.
  funeral expenses, 1341.
  transportation of remains, 1416, 1417.
Decoration Day, 47.
Decorations (see *Medals of Honor*):
  foreign, 1354, 1355.
Deductions of Pay:
  commissioned officers, 850–856.
  enlisted men, 889–898.
Delinquents in Accounting (see *Accounts*, and *Disbursing Officers*):
  reports, 641.
Dental Surgeons, 903, 904.
Department of Justice (see *Attorney-General*, and *Attorney-General's Office*):
  injuries to public works, prosecutions for, 1122–1132.
Departmental Libraries, 109.
Departments. (See *Executive Departments.*)
Depositions, 1828; 91 A. W. (See *Evidence.*)
Depositories (see *Treasury*, and *Treasury Department*), 289, 290.
Deposits (see *Sales*):
  proceeds of sales, 611–616.
Deposits in District of Columbia Harbors, 1147–1150.
Deposits in New York Harbor, 1134–1146.
Deposits of Pay by Enlisted Men, 879–882.
  forfeiture for desertion, 879.
  interest, 880.
  repayment, 879, 882.
Depots:
  ordnance, 1168.
Deputy Paymasters-General, 800.
Deserters (see *Desertion*, and *Rewards*):
  apprehension, 1407–1409.
  enlistment of, prohibited, 1395, 1401, 1402.
Desertion (see *Deserters*):
  aiding, enticing in, 1405, 1406.
  evasion of draft, 1399.
  forfeiture of bounty land, 1400,
  forfeiture of citizenship, 1397, 1398, 1874, 1875.
  forfeiture of pension, 1404.
  making good time lost, 1396.
  offense, 1394; 47 A. W.
  persuading, 1405.
  removal of charge of, 1241–1253.
  statute of limitations in, 1411.
  statutory penalties, 1396–1398.
Designated Depositories, 289, 290.
Des Moines River, Iowa, 1094.
Details (see *Army*, *Commissioned Officers*, and *Enlisted Men*):
  extra-duty, 743, 744.
Details to Colleges (see *College Details*), 1288–1296.
Details to the Staff (see *Staff Departments*):
  examination, 580.
  promotions in line, 582.
  return to duty in line, 582.
  selection, 580.
  term, 581.
Disabilities:
  political, removal, 157.
Disbandment of Military Forces, 535–542.
Disbursing Agents, 291–295*a*. (See *Disbursing Clerks*, and *Disbursing Officers.*)
  bonds, 295.
  collectors to act as, 291.
  compensation, 290, 294.
  special agents, 292.
  restriction on compensation, 293.
Disbursing Clerks (see *Disbursing Agents*, and *Disbursing Officers*):
  appointment, 24.
  bonds, 24.
  duties, 24.
  salary, 24.

Disbursing Officers (see *Accounting Officers*, *Accounts*, and *Pay Department*):
accounting, 632–635.
accounts outstanding over three years, 312.
accounts to be itemized, 622.
advances, 617, 618.
advance decisions of Comptroller, 627.
amount of appropriation, determination of, 623.
appropriations, 271–276.
application of appropriations, 620.
assignment of claims, 628.
balances of appropriation, disposition, 624.
balances unexpended, application, 279–282.
bonds, 592.
bribe, accepting of, penalty, 657, 658.
checks, 309–311, 630.
claims, not to be interested in, 656.
contracting beyond appropriation, 659.
counterfeit money, 629.
custodianship of funds, 301–303.
delays in transmission of accounts, 638–640.
delinquencies in accounts, report, 641.
deposits, 299–303, 606–610.
disbursements, 617–624.
drafts, 630.
duty as custodians of funds, 608.
duty as to depositing funds, 299–303.
embezzlement, larceny, etc., 660.
embezzlement, record evidence of, 651.
entries of receipts and disbursements, 621.
evidence of conversion, 653.
exchanging funds, 609, 610.
expenditures, restriction on, 619.
failure to deposit funds, 607, 649, 650.
failure to render accounts, 648.
failure to safely keep public funds, 646, 647.
fiscal year, 184, 635.
forms of accounts, 191, 633.
increase of bond, 593.
inspection of disbursements, 625, 626, 685, 686.
legal tender, 305–308.
loaning public money, 645.
outstanding checks, 309–311.
premiums on exchanges, 610.
presentation of drafts, 630.
powers of attorney, 628.
receiving embezzled money or property, 661.
refusal to pay draft, 652.
rendition of accounts monthly, 185, 636–641.
restriction on expenditures, 619.
revision of accounts, 642.
safe-keeping of funds, 606–610.
sales, proceeds of, 611–616.
short payments, 644.
suits for recovery of money, 643.
sureties, 594–605.
transmission of accounts, 157, 638–640.
unlawful depositing of money, 645.
Disbursements (see *Disbursing Officers*):
inspection of, 625, 626, 685, 686.
Discharges:
by whom given, 1383; 4 A. W.
certificates of, 1388–1390.
certificate of, duplicate, 1388.
dependency of parent, 1387.
disability, 1385.
dishonorable, 1384, note.
Discharges—Continued.
honorable, 1383.
jurisdiction after dishonorable, 1384.
purchase of, 1386.
travel pay, 850, 851, 887, 888.
without honor, 1384, note.
Discharge Certificate:
return of, to claimant, 218.
Discharged Soldiers:
preference to, in reduction, 37.
Dishonorable Discharge, 1384, note.
Dismissal of Officers, 1328–1330.
Distress Warrants, 251–264.
contents, 252.
conveyances of land, 257.
execution, 253, 254, 262.
extent of application, 260
failure to account, 259.
injunction to stay execution, 262.
lands, sale of, 256.
levy to be a lien, 255.
postponements, 261.
procedure, 263.
rights of United States reserved, 264.
District Attorneys:
Prosecution of claimants of false claims, 241–243.
District of Columbia:
full inspection of fuel in, 1578–1580.
harbor regulations, 1147–1150.
District of Columbia Militia (see *Militia*):
accountability of officers, 1744.
active militia, 1717.
adjutant-general, 1715, 1716.
allowances, etc., 1766–1770.
ambulance corps, 1723.
armories, 1748.
arms, 1738–1750.
artillery, 1722.
bands, 1724, 1767.
by laws, restriction, 1771.
calling forth, 1711, 1712.
command, 1712–1716.
commander in chief, 1712.
commanding general, 1713.
commissioned officers, 1726–1731.
contracts, leases, etc., 1770.
courts-martial, 1761–1765.
deductions of pay, etc., 1749, 1750.
disbursements, 1769, 1770.
disbandment of commands, 1725.
discharges, 1731, 1735–1737.
discipline, 1773.
distinctive uniforms, 1746, 1747.
duties, 1751–1760.
duties of officers, 1772.
elections, 1729.
encampments, 1754.
engineer corps, 1723.
enlisted men, 1732–1737.
enrollment, 1707–1711.
equipments, 1738–1750.
estimates, 1769.
examinations, 1730.
exemptions, 1708.
expenses, etc., 1766–1770.
infantry, 1719–1721.
instruction, 1773.

District of Columbia Militia—Continued.
issues to, 1739–1740.
leases, etc., 1770.
military dutes, 1757–1760.
National Guard, 1717, 1718.
noncommissioned officers, 1732.
organization, 1717–1725.
parades, 1758, 1759.
property returns, 1742.
regulations, 1774.
riots, suppression of, 1756.
signal corps, 1723.
status of members, 1775.
strength, 1718.
subsistence on duty, 1768.
tribunals, military, 1761–1765.
uniform, 1738–1750.
unserviceable property, 1745.
Double Salaries, 166. (See *Salaries.*)
Draft Animals:
purchases of, 731.
Drafts (see *Checks*), 309–311, 630.
Draftsmen:
engineer bureau, 976.
Drawbridges on Navigable Waters, 1116, 1117.
regulations for, 1117.
Drays:
purchases, 729.
Dredging Beyond Harbor Lines, 1120.
Duels (see *Challenges*).
Duplicate Certificate of Discharge, 1388–1390.
Eight-Hour Law, 1572–1575.
Election Franchise:
enforcement, 2066, 2067.
Electrician Sergeants, 1443.
Embezzlement, 660.
Emergency Purchases, 713, 768. (See *Purchases.*)
Emergency Ration, 770. (See *Rations*,)
Employees, Civil (see *Civil Employees*, and *Civil Service*):
deceased, transportation of remains, 96.
restrictions on employment, 26–31.
Employment of Military Force:
Atlantic and Pacific Railroad, 2066.
combinations in restraint of trade, 2063.
election franchise, 2066, 2067.
extradition, 2080–2083.
guano islands, 2094–2102.
Hawaiian Islands, 2068.
Indian reservations, 2023–2028.
insurrection, 2015–2022.
invasion and insurrection, 2015–2022.
neutrality, enforcement of, 2069–2079.
Northern Pacific Railroad, 2064.
obstructing mails, 2062.
public health, 2068.
public lands, 2069–2071.
quarantine, 2068.
restriction on, 2093.
Southern Pacific Railroad, 2067.
suspension of intercourse, 2029–2050.
treason, 2094–2098.
Union Pacific Railroad, 2065.
Engineer Battalions, 961–971. (See *Engineer Corps*, and *Engineer Department.*)
band, 961, 963, 964.
companies, 968.
Engineer Battalions—Continued.
duties, 970.
increase in strength, 969.
line of Army, 962.
noncommissioned staff, 965.
number, 961.
officers, 967.
organization, 965–967.
staff, 966.
Engineer Bureau:
draftsmen in, 976.
Engineer Commissioner, District of Columbia, 1011–1019.
assistants, 1016.
appointment, 1011, 1012.
control of wharf property, 1019.
estimates, 1017.
powers, 1018.
Engineer Company (see *Engineer Battalions*):
increase in strength, 969.
organization, 968.
Engineer Corps (see *Engineer Battalions*, and *Engineer Department*):
appointments, 956.
bands, 963, 964.
battalions a part of line, 962.
command, 960.
composition, 953.
enlisted men, 961–971.
examinations for promotion, 958, 959.
fourteen years' service, promotion, 957.
organization, 953; p. 1059.
promotions, 955, 957.
transfers, 960.
Engineer Department (see *Navigable Waters of the United States*, and *River and Harbor Works*):
annual reports, 1103.
bridge equipage, 971.
bridges over navigable waters, 1114–1117.
California Débris Commission, 1049–1081.
civil engineers, 973–975.
clerical force, 134.
command of officers, 567.
contracts and purchases, 1104–1106.
deposits in New York Harbor, 1134–1146.
disbursements for fortifications, 1089.
draftsmen, 976.
Engineer Commissioner, District of Columbia, 1011–1019.
estimates, 1102.
fishways, 1109.
fortifications, 1086–1090.
harbor lines, 1118–1121.
historical note, p. 437.
injuries to public works, 1122–1132.
Isthmian Canal Commission, 1082–1085.
Light-House Board, 1021–1028.
mileage on river and harbor works, 1110.
Mississippi River Commission, 1029–1043.
Missouri River Commission, 1044–1048.
navigable waters, 1091–1097.
obstructions to navigation, 1114–1117.
operation of canals, etc., 1111–1113.
permits for use of public works, 1125.
pontoons, etc., 971.
promotion, fourteen years' service, 591.

- **Engineer Department**—Continued.
  - reports, 1098.
  - retired officers, employment in, 975.
  - river and harbor works, 1098–1110.
  - river and harbor works, report, 132.
  - sunken vessels, removal, 1132a, 1133.
  - surveys, restrictions on, 1099–1101.
  - transfer of officers, 590, 960.
  - use of public works, prohibition, 1125.
  - wrecks, removal of, 1132a, 1133.
- **Engineer School**, 1515.
- **Engineer Troops**, p. 1052.
- **Engineers:**
  - employment, 26, 27.
- **Enlisted Men** (see *Enlistments*, and *Re-enlistments*):
  - absence without leave, 1393.
  - allotments of pay, 871–875.
  - allowance of—
    - clothing, 893, 894.
    - fuel, 738 note.
    - quarters, 734–737.
    - rations, 771, 772.
  - altering clothing, 891, 892.
  - certificates of merit, 1358, 1359.
  - claims for property lost, 221, 222.
  - confinement, 1783–1785.
  - cooking, supervision of, 788.
  - deceased, 1412–1415.
    - effects of, 1414, 1415.
  - deductions, 889–898.
  - deposits, 879–882.
  - desertion, 1394–1404.
  - details for recruiting service, 679.
  - discharge, 1383–1390.
  - enlistment, 1364–1375.
  - examinations of, for promotion, 1278–1282.
  - exemption from arrest for debt, 1412.
  - extra-duty pay, 742–747.
  - funeral expenses, 1416–1418.
  - furloughs, 1378.
  - increased pay in time of war, 512.
  - issues of rations, 771, 772.
  - medals of honor, 1356, 1357.
  - ordnance sergeants, 1162, 1163.
  - payments to, 800–804.
  - quarters, allowance of, 738, note.
  - rations, 769–777.
  - redress of wrongs, 1852; 30 A. W.
  - re-enlistment, 1373–1375.
  - remains, disposition, 1416–1418.
  - restriction on numbers, 507, 508; p. 1064.
  - retired pay, 876–878.
  - retirement, 1379–1382.
  - sales of subsistence to, 778–784.
  - servants, not to be used as, 1335, 1413.
  - Signal Corps, 1224.
  - Soldiers' Home, 2269–2278.
    - deductions for, 889.
  - stoppages of pay, 889–898.
  - transfers, 1376, 1377.
  - transportation, 720, note.
  - travel pay on discharge, 1391, 1392.
- **Enlistments** (see *Enlisted Men*, and *Re-enlistments*):
  - age, 1364, 1365.
  - bounty, 677.
  - citizenship, 1366.
  - deserters, 1368, 1369.
- **Enlistments**—Continued.
  - English, reading, writing, and speaking, 1366.
  - excess in, authorized, p. 1062.
  - felons, 1368, 1369.
  - fraudulent, 675, 1372.
  - general qualifications, 1364, 1365.
  - insane persons, 1368, 1369.
  - intoxicated persons, 1368, 1369.
  - language, 1366.
  - minors, 1367, 1368, 1369.
  - oath of, 676.
  - premium for, 1371.
  - prohibited, 1367–1369.
  - qualifications for, 670, 671.
  - term, 1370.
  - unlawful, 674.
- **Ensigns (Navy):**
  - relative rank, 564.
- **Envelopes** (see *Penalty Envelopes*):
  - contracts for, by Postmaster-General, 328.
  - penalty, 100, 320–327.
  - purchase of, by Postmaster-General, 328.
  - return penalty, 326.
- **Estimates** (see *Appropriations*):
  - appropriations outstanding, 66.
  - Book of, 62–78.
  - buildings, 68.
  - buildings rented, 73, 74.
  - channel of communication, 65.
  - claims allowed, 70.
  - compensation, of officers, etc., 69.
  - condition of business, 77.
  - contents, 66–78.
  - date of submission, 64.
  - deficiencies, 65.
  - detailed clerks, reports of, 77.
  - efficiency report of clerks, etc., 78.
  - explanation of items, 72.
  - increase in, 72.
  - manner of communicating, 64–67.
  - preparation, 64.
  - printing and binding, 68.
  - proceeds of sales, 75.
  - public works, 71.
  - river and harbor works, 71, 76.
  - salaries, 69.
  - statement of appropriations, 63, 66.
  - submission, 266, 267.
  - transmitted through Secretary of Treasury, 65.
  - variation in amount, 72.
- **Evidence:**
  - accused persons, testimony of, 1817.
  - consular records, 1824.
  - depositions, 1828; 91 A. W.
  - documents in Executive Departments, copies, 1818–1822.
  - embezzlement, 651.
  - exclusion of, for color, interest, etc., forbidden, 1815.
  - given under oath, 1814; 92 A. W.
  - journals of Congress, 1823.
  - judicial proceedings, 1825.
  - laws of United States, 1827.
  - legislative acts, 1825.
  - record of court of inquiry, 1869; 121 A. W.
  - records of State officers, 1826.
  - returns office, 1822.

- **Evidence**—Continued.
  - Revised Statutes, 459.
  - Statutes at Large, 483–485.
  - supplements to Revised Statutes, 477.
  - transcripts from books of Treasury, 1820, 1821.
  - transcripts of accounts by Auditor, 205.
- **Examination** (see *Civil Service*, *Commissioned Officers*, and *Examinations for Promotion*):
  - absence of officer, p. 1063.
  - admission to Military Academy, 1482.
  - details to staff, 580–582, 1285.
  - Marine Corps, 423, 424.
  - promotion, 583–588, 1274–1277.
  - volunteer officers, 522.
- **Examinations for Promotion** (see *Examination*):
  - absent officer, 588.
  - civil appointee, 585.
  - engineer officer, 587.
  - enlisted men, 1278–1282.
  - failure to pass, 584.
  - physical disqualification, 584.
  - ordnance officer, 587.
  - re-examination, 584.
- **Exchanges of Funds**, 609, 610.
  - premium to be accounted for, 610.
- **Executive** (see *Executive Departments*, and *President*):
  - Commander in Chief, 2.
  - reprieves, 2.
- **Executive Departments** (see *Chief Clerks*, *Clerks*, *Executive Departments*, and *Salaries*):
  - advertising, 79, 81.
  - annual reports, 86–92.
  - arms, issues to, 1204.
  - arrears of business, reports, 53.
  - books, papers, etc., accessible to accounting officers, 108.
  - chief clerks, 21–23.
  - claims, prosecution of, 110–116.
  - classification of clerks, 32–35.
  - clerks, 25–48.
    - reports of, 87.
  - closing buildings for death of ex-officer prohibited, 98.
  - condition of business, reports of, 77, 88.
  - contracts, 80–82.
  - copies of documents in evidence, 1818–1822.
  - Court of Claims, reference of cases to, 366.
  - detail of clerks, 35.
  - destruction, forgery, etc., of public records, 103–105.
  - draping buildings in mourning probibited, 97.
  - envelopes, penalty, 100, 320–327.
  - envelopes, purchase of, 328.
  - fuel, inspection of, 83–85.
  - holidays, 46–48.
  - hours of labor, 52, 53.
  - interpretation of term, 12.
  - inventories of property, 93.
  - laborers, 38.
  - libraries, 109.
  - messengers, 38.
  - oaths, 49–51.
  - official register, 92a.
  - penalty envelopes, 100, 320–327.
  - postage stamps, official, 99.
  - proposals, 80.
  - provisions of law applicable to, 12.
- **Executive Departments**—Continued,
  - purchases, 80–82.
  - recording clocks prohibited, 95.
  - records, 20.
  - reduction of clerks, 36, 37.
  - regulations, 20.
  - renting buildings, restriction on, 93a, 94.
  - reports, 86–92.
  - requisitions for funds, 61.
  - stationery, purchases of, 82.
  - telegraph line to Capitol, 101, 102.
  - useless papers, disposition 106, 107.
  - watchmen, 38.
- **Executive Power**, 1. (See *President.*)
- **Executors:**
  - liability of, 246.
- **Exemption from Arrest** (see *Arrest*):
  - enlisted men, 1412.
  - marines, 438.
- **Expatriation, Right of**, 1877.
- **Expert Accountant:**
  - Inspector-General's Office, 684.
  - travel allowances, 847.
- **Extortion**, 1566.
- **Extradition:**
  - enforcement of, 2080–2083.
- **Extra Duty** (see *Pay*):
  - artisans, pay of, 742, 745.
  - assistant to Vicksburg Park Commission, 2408.
  - clerks, pay of, 742, 745.
  - details on, to be in writing, 743, 744.
  - insular possessions, 747.
  - laborers, pay of, 742, 745.
  - mechanics, pay of, 742, 745.
  - rates of pay, 742, 745.
  - restriction on, in insular possessions, 747.
  - restriction on, in time of war, 746.
  - school teachers, pay of, 742, 745.
  - teamsters, pay of, 742, 745.
  - time of war, 746.
- **Extra Pay** (see *Pay*):
  - volunteers on discharge, 536–539.
- **Failure to Deposit Funds**, 649, 650.
- **Failure to Render Accounts**, 648.
- **Failure to Safely Keep Public Funds**, 646, 647.
- **Family:**
  - restriction on appointment of members, 152.
- **Federal Courts** (see *Habeas Corpus*):
  - habeas corpus, 346–361.
- **Field Artillery**, 1430, 1439, 1440.
- **Field Ration**, 770.
- **Fiscal Agents**, expenses, 295a.
- **Fiscal Year**, 184.
- **Fishways**, 1109.
- **Flags** (see *Colors*):
  - captured, disposition, 124,
  - United States, description, 2466, 2467.
- **Flogging, prohibited**, 1833.
- **Forage:**
  - allowance, 740, 741.
  - commutation in Marine Corps prohibited 430.
- **Forces:**
  - National, composition, 495, 496.
- **Foreign Service:**
  - computation of, for retirement, 1381.
- **Foreign Decorations**, 1354, 1355.
  - restrictions as to use of, 1355.
- **Forms of Accounts**, prescribed by Comptroller, 191.

Fortification, Board of Ordnance and, 1209–1217.
Fortifications (see *Board of Ordnance and Fortifications*):
  disbursements, 1089.
  donations of land, 1087.
  emergency procedure, 1088.
  injury to mines, etc., 1090.
  penal offenses, 1090.
  procurement of sites, 1086, 1088.
Franking Privilege, 100, 320–327.
  Members of Congress, 100, 322–325.
  official correspondence, 100, 320–327.
  penalty envelopes, 100, 320–327.
Fraud:
  in civil service examination, 149.
Fuel (see *Quartermaster's Department*):
  allowance, 738, note.
  inspection of, in District of Columbia, 83–85, 1578–1580.
  sales to officers, 740.
Funds (see *Accounts, Public Moneys*, and *Treasury Department*):
  advances of, 617, 618.
  requisitions for, 61, 209.
Funeral Expenses (see *Burial*, and *Deceased Officers*):
  commissioned officers, 1341.
  enlisted men, 1416–1418.
Furloughs to Enlisted Men, 1378.
  pay during, 884.
Furniture for Schools, 714.
Garrison Courts-Martial, 1853, 1854; 82 A. W. (See *Inferior Courts.*)
Garrison, Ration, 770.
General Courts-Martial (see *Courts-Martial*):
  arraignment, 1808; 89 A. W.
  attachment, process of, 1810.
  behavior of members, 1806; 87 A. W.
  challenges, 1802; 88 A. W.
  closed sessions, 1830.
  composition, 1791–1793; 75–78 A. W.
  constitution, 1789–1790; 72, 73 A. W.
  contempt of court, 1807; 86 A. W.
  counsel for accused, 1800.
  findings, 1829; 95 A. W.
  judge-advocates, 1798, 1799.
  jurisdiction, 1795, 1797.
  members, 1791–1794, 1806; 75–79, 87 A. W.
  oath—
    judge-advocate, 1805; 85 A. W.
    members, 1804, 84 A. W.
    witness, 1809; 92 A. W.
  reporters, 1801.
  sentences, 1831–1337.
General Officers:
  appointment, 559, 560; p. 1063.
  sentences affecting, 1821.
General of the Army:
  discontinuance of office, 558.
General of the Army:
  historical note, p. 203.
Geneva Convention of 1864; pp. 1029–1034.
  additional articles of October 20, 1868; pp. 1034–1040.
    agreement of July 29, 1899; pp. 1041–1043.
Gettysburg National Park, 2379–2393.
  acquisition of lands, 2379, 2382, 2383, 2389.
  appropriations, 2384.
Gettysburg National Park—Continued.
  avenues, 2385.
  commissioners, 2381.
  condemnation of lands, 2383, 2389.
  continuing surveys, 2386.
  designation, 2380.
  disbursements, 2384.
  injuries to monuments, trees, etc., 2394.
  leases, 2390.
  monuments, 2385, 2391–2393.
  regulations, 2395.
  roads, 2385, 2387.
  specimens of arms, uniforms, etc., 2388.
  tablets, 2385.
Government Hospital for the Insane, 2340–2348. (See *Insane Hospital.*)
Government Works, Injuries to, 1122–1132.
Gratuitous Issues (see *Issues*):
  clothing, 750.
  ordnance, 1182, 1183.
Guano Islands, Protection of, 2094–2102.
Gunners, Increased Pay to, 1444.
Habeas Corpus:
  appeals, 358–360.
  body of petitioner, production of, 353.
  form of return, 351, note.
  issue of writ, 350.
  power to issue writ, 346–350.
  return, to writ, 351–356.
  State courts, jurisdiction in, 361.
  suspension of privilege, 361a.
Harbor Lines:
  District of Columbia, 1121.
  dredging beyond, 1120.
  establishment, 1118.
  extensions of piers, etc., 1119.
  permits, 1119.
  restriction on dredging, 1120.
Harbor Regulations:
  District of Columbia, 1147–1150.
Harpers Ferry, Marking Lines of Battle at, 2419.
Hawaiian Islands, Enforcement of Law in, 2068.
Hazing at Military Academy, 1495. (See *Military Academy.*)
Headquarters:
  clerks', 572, 573.
  location, 574.
  messengers', 572, 573.
Heads of Bureaus (see *Chiefs of Bureaus*):
  succession to office, 14.
  vacancies, temporary, 13–19.
Heads of Executive Departments (see *Executive Departments*):
  absence, performance of duty, 13.
  accounting—
    regulations for, 208.
    rules for, 634.
  chief clerks' reports, 22, 23.
  Comptroller's decisions in accounting, 192.
  details of clerks, 35.
  distribution of clerks, 35.
  estimates, 62–78.
  opinions of Attorney-General, 2.
  reduction of clerks in grade, 36, 37.
  regulations, 20.
    for property returns, 1636.
  reports, 86–92.
  reports of chief clerk, 22, 23.
  vacancy in office, succession, 13, 15, 16.

Holidays, 46–48.
Homesteads, 1584–1592.
Honorable-Service Roll, Prohibition of, 30.
  selling, losing, etc., 1649; 17 A. W.
  restriction on—
    number, 728–732.
    purchases, 729–732.
  transportation, 720, note.
Hospital Corps (see *Hospital Stewards*, and *Hospitals*):
  acting hospital stewards, 914, 920, 924.
  composition, 914.
  duties, 922.
  hospital stewards, 915–921.
  pay, 919.
  privates, 914.
Hospital Stewards (see *Hospital Corps*, and *Hospitals*):
  allowances, 919.
  appointment, 915.
  credit for volunteer service, 921.
  examination, 920, 921.
  number, 915–917.
  pay, 919.
  quarters, 736, 931.
  rank, 919.
  qualifications, 920, 921.
Hospitals (see *Hospital Corps*, and *Medical Department*):
  matrons, 929, 930.
  nurses, 930.
  quarters for stewards, 931.
  rations to—
    matrons, 773.
    nurses, 773.
Hot Springs, Ark.:
  Army and Navy Hospital, 936–939.
House of Representatives:
  franking privilege, 100, 322–325.
Hydraulic Mining (see *California Débris Commission*), 1056–1072.
Increased Pay (see *Commissioned Officers*, and *Pay of Enlisted Men*):
  commissioned officers, 814–816.
  enlisted men, 865, 866.
Indian Agencies (see *Indian Agents*, and *Indians*):
  buildings, sale of, 1939, 1940.
  consolidation, 1917.
  discontinuance, 1916.
  limits of, 1901.
  transfer of, 1918, 1919.
Indian Agents (see *Indian Agencies*, and *Indians*):
  acknowledgments, 1910.
  additional security, 1915.
  Army officers as, 1903, 1904.
  bonds, 1900.
  compensation to be in full, 1913.
  discharge of employees, 1920.
  duties, 1897, 1909–1911, 1921.
  investigations, 1911.
  limits of agency, 1901.
  oaths, administration of, 1909, 1911.
  residence, 1902.
  restriction on compensation, 1905.
  restriction on office holding, 1912.
  special agent, 1906.
  sub-agents, 1907.
Indian Agents—Continued.
  superintendent of manual training school to act as, 1908.
  tenure of office, 1899.
  travel expenses, 1914.
Indian Country (see *Indian Reservations*, and *Indians*):
  arson, 1991.
  assault, 1990.
  burglary, 1994.
  forgery, 1986.
  horse stealing, 1993.
  laws extended to, 1987, 1988.
  rape, 1992.
  removal of intruders, 2000–2005.
  robbery, 1994.
Indian Department (see *Indian Agents*, and *Indians*):
  officers of Army to be detailed as agents, 1333.
Indian Police, 2011–2014.
Indian Reservations (see *Indian Country*, and *Indians*):
  cattle, sale or removal of, 1973, 1974.
  crimes and offenses, 1986–2010.
  expulsion of foreigners, 1968.
  government of Indians, 1941–1959.
  hunting on, forbidden, 1972.
  liquor, introduction or sale of, 1975–1985.
  police, 2011–2014.
  process on, 2006–2008.
  protection of Indians, 1941–1959.
  removal of persons, 2000–2005.
  removing cattle, penalty, 1973.
  sales of arms, 1970, 1971.
  sales of cattle, penalty, 1974.
  service of process on, 2006–2008.
  timber depredations, 1999, 2000.
  traders, 1960–1967.
Indian Scouts, 506.
  pay, 864.
  strength, 506.
Indian Traders:
  appointments, 1960, 1961.
  licenses to trade, 1962–1967.
Indian Wars, Pensions for, 2167–2174.
Indians (see *Indian Agencies*, *Indian Agents*, *Indian Country*, and *Indian Reservations*):
  abrogation of treaties with, 1923.
  absconding, arrest of, 2006.
  agents, 1898–1921.
  annuities, 1924, 1925, 1929–1938.
  arms, sales to, 1969–1971.
  crimes in connection with, 1986–2010.
  Army officers as agents, 1903, 1904.
  Commissioner of Indian Affairs, 1894, 1895.
  government and protection, 1941–1959.
  inspectors, 1896, 1897.
  issues of army rations to, 774.
  liquor, introduction and sale, 1975–1985.
  not permitted to enter Texas, 2010.
  offenses against, 1994.
  performance of engagements with, 1922–1940.
  police, 2011–2014.
  prohibited purchases and sales, 1969–1971
  purchases from, 718.
  reparation for injured property, 1996–1998.
  sales of arms to, 1970–1971.

Indians—Continued.
  Secretary of Interior, powers, etc., 1893, 1894.
  subject to criminal laws, 1989.
  traders, 1960–1974.
  treaties with, not to be made, 1922.
Infantry (see *Infantry Regiments*):
  bands, 1448.
  battalion staff, 1449.
  increase in strength, 1451.
  colored regiments, 1446.
  companies, 1450.
  composition, 1445.
  organization, 1445.
  Porto Rican regiment, p. 1065.
  regiment, p. 1051.
  regimental staff, 1445, 1447.
Infantry Regiments (see *Infantry*):
  bands, 1448.
  battalions, 1445, 1449.
  colored regiments, 1446.
  companies, 1450.
  composition, 1445.
  details, 1447.
  increase in strength, 1451.
  staff, 1445, 1447.
Infantry and Cavalry School, 1518.
Inferior Courts (see *Garrison Courts-Martial*, *Regimental Courts-Martial*, and *Summary Court*):
  disposition of records, 700, 701.
  garrison courts, 1853; 82 A. W.
  jurisdiction, 1851–1861.
  power to punish, 1854.
  redress of wrongs, 1852; 30 A. W.
  regimental courts, 1851; 81 A. W.
  summary court, 1855–1861.
Injuries to Public Works, 1122–1132.
Insane, Government Hospital for, 2340–2348.
Insane Hospital:
  admissions, 2344.
  appropriations, 2345.
  asylums in California, 2348.
  discharges, 2331.
  establishment, 2340.
  funds of inmates, 2343.
  inmates of Government Asylum for the Insane, 2346.
  pensions to inmates, 2347.
  superintendent, 2342, 2343.
  supervision, 2341.
Insignia of Societies, 1360–1363.
Inspector-General's Department (see *Inspector-General's Office*):
  administration of oaths, 691.
  composition, 680.
  designation of articles for sales, 690.
  details, 682, 683.
  duties, 685, 686, 688–691.
  examinations for promotion, 681.
  expert accountant, 684.
  historical note, p. 263.
  inspections, 685–691.
  National Home, inspection of, 688, 2295.
  organization, 680; p. 1053.
  promotions, 681.
  public works, inspection of, 685, 686.
  restriction on mileage, 687.
  Soldiers' Home, inspection of, 689, 2266.
Inspector-General's Office (see *Inspector-General's Department*):
  clerical force, 134, note.
Inspections:
  disbursements, 625, 626, 685, 686.
  fuel, in District of Columbia, 83–85, 1578–1580.
  reports, 626.
Insular Possessions:
  extra-duty pay forbidden in, 747.
Intercourse:
  suspension of, 2029–2050.
Interior Department:
  duties, 452, 453.
  establishment, 451.
Inventions:
  patents on, 1201.
  prohibition of expenditures on, 1200.
Iowa River:
  a navigable water, 1093.
Issues (see *Gratuitous Issues*, and *Quartermaster's Department*):
  civilians, 771, note.
  forage, 740, 741.
  fuel, 738, note.
  ordnance, 1167, 1168.
  rations, 766.
  visiting Indians, 774, note.
Isthmian Canal Commission, 1082–1085.
Job Printing, 710.
Judge-Advocate-General:
  custodian of records of courts-martial, 696.
Judge-Advocate-General's Department (see *Judge Advocate-General's Office*):
  administration of oaths, 699.
  appointments, 694.
  composition, 692.
  details, 695.
  duties, 696–699.
  historical note, p. 268.
  judge-advocates' duties, 698.
  organization, 692; p. 1053.
  professor of law at the Military Academy, 698.
  promotions, 693.
  records of trials by court-martial, 700, 701.
Judge-Advocate-General's Office (see *Judge-Advocate-General's Department*):
  clerical force, 134.
Judge-Advocates of Courts (see *General Courts-Martial*, and *Judge-Advocate-General's Department*):
  appointment, 1798; 74 A. W.
  authentication of record, 1839, note.
  closed sessions, withdrawal, 1830.
  counsel for accused, 1800; 90 A. W.
  duties, 1799; 90 A. W.
  oath, 1804, 1805; 84, 85 A. W.
  record of proceedings, 113 A. W.
Labor Day, 48.
Labor:
  bonds to secure payment for, 1576, 1577.
  hours of, 52, 53.
Laborers:
  extra-duty pay, 742, 745.
  salaries, 38.
Land-Grant Railroads, 722, 725.
Lands (see *Acquisition of Land*, and *Public Lands*):
  acquisition, 1593–1599.

Lands—Continued.
  examination of titles, 334, 335.
  purchases, authority of law for, 1593–1595.
Lapsed Salaries, 28. (See *Salaries.*)
Larceny:
  penalty, 660.
Law Books:
  purchases of, 58.
Law of War, 2112.
Leases of Public Property, 1620.
Leaves of Absence (see *Absence*), clerks, etc., 43–45.
  commissioned officers, 826–828.
  cumulation, 1287.
  employees at arsenals, 1196.
  female nurses, 927.
  nurses, 927.
  pay during, 826–828.
  sick leaves, 43–45, 1286.
Legal Services:
  how procured, 342–344.
Legal Tender, 305–308.
Letters (see *Official Letters*):
  penalty envelopes, 100, 320–326.
  registry, 327.
Libraries:
  Executive Departments, 109.
Library of the Surgeon-General's Office, 940.
Lieutenant-Colonel:
  relative rank, 564.
Lieutenant-Commander (Navy):
  relative rank, 564.
Lieutenant-General:
  aids, 556.
  military secretary, 556.
  relative rank, 564.
  historical note, p. 206.
Lieutenants:
  relative rank, 564.
Lieutenants, Senior and Junior Grade (Navy):
  relative rank, 564.
Light-House Board, 1021–1028.
  composition, 1021, 1022, 1026.
  duties, 1023.
  inspectors, 1026.
  purchases, 1024, 1025.
Limited Retired List, 1301, 1302.
Limits of Punishment, 1838. (See *Punishment.*)
Line of the Army:
  artillery corps, 1429; p. 1049.
  cavalry, 1419–1428; p. 1048.
  engineer battalions, 962.
  infantry, 1445–1451; p. 1051.
Liquor:
  introduction and sale on Indian reservations, 1975–1985.
  sale of—
    at exchanges, 1630.
    in buildings used for military purposes, 1630.
Loaning Public Money, 646.
Logs:
  floating of, in navigable waters, 1128, 1129.
Longevity Pay, 818–823.
Louisiana:
  rivers in, 1092.
Magazine Small Arms, 1202.
Major:
  relative rank, 564.
Major-General:
  aids, 557.
  forage, 740.
  fuel, 738, note.
  historical note, p. 203.
  quarters, 738.
  relative rank, 564.
Makoqueta River, Iowa, 1096.
Mail Matter:
  classification, 316.
  franking privilege, 320–327.
  rates of postage, 317.
  registry, 327.
  soldiers' letters, 317.
  special delivery, 318, 319.
Maps:
  sale of, 140, 141.
Marine Band, 435.
Marine Corps (see *Navy Department*):
  age limit, 423.
  allowances, 429.
  appointments, 421–424.
  commandant, 420.
  composition, 419.
  courts-martial, 446.
  duty on shore, 443.
  enlisted strength, 434.
  enlistments, 436.
  examinations, 423, 424.
  forage, commutation prohibited, 430.
  oath of enlistment, 437.
  organization, 442.
  pay, 429.
  rations, 439–441.
  regulations, 444.
  relative rank, 427.
  retirement of officers, 431, 432.
  shore duty, 443.
  staff, 425, 426.
  vacancies, 422.
Marines (see *Marine Corps*):
  issues of subsistence, 766.
Marking:
  as punishment, prohibited, 1833.
Materials:
  bonds to secure payment for, 1576–1577.
Matrons, Hospital (see *Hospitals*):
  rations, 773.
Maximum Punishment Code, pp. 1067–1073. (See *Punishment.*)
Means of Transportation (see *Transportation*):
  procurement, 726.
Meat Issues:
  proportion, 770.
Medals of Honor, 1356, 1357. (See *Decorations.*)
Medical Attendance:
  commissioned officers, 911.
  enlisted men, 911.
  families, 911.
  nurses, 927.
Medical Department (see *Staff Departments*, and *Surgeon-General's Office*):
  appointments, 902.
  army medical museum, 940, 941.
  artificial limbs, 942–952. (See *Artificial Limbs.*)
  attendance, 911.
  command of officers, 508, 913.

Medical Department—Continued.
composition, 899, 901.
contract surgeons, 902; p. 1056.
cooking, supervision of, 912.
credit for service, 905.
dental surgeons, 903, 904; p. 1056.
duties, 910–913.
examinations for—
appointment, 902.
promotion, 903, 904.
female nurses, 925–928.
headquarters, location, 574.
historical note, p. 363.
Hospital Corps, 914–924.
hospitals, 929–931.
Hot Springs, Ark., hospital, 936–939.
library, 940.
nurse corps, 925–928; p. 1057.
nurses, pay, 858–861.
organization, 899, 901; p. 1055.
promotions, 903, 904.
purchases, 932, 933.
rank and precedence, 901.
relative rank, 906.
sales of medical supplies, 934, 935.
trusses, 950–952.
volunteer surgeons, 900.
volunteers, 519.
Member of Congress (see *Penalty Envelope*):
consideration for obtaining office, 178.
contracts, not to be interested in, 178.
franking privilege, 322–325.
Messengers at Headquarters, 572, 573.
Messengers of Executive Departments:
salaries, 38.
Mess Furniture:
purchases, 714.
Messes:
purchases for, 714.
Mexican War Pensions, 2157–2166.
Mileage (see *Pay Department*, and *Travel Allowances*):
deduction for transportation in kind, 721–725, 843–845.
duty to be stated, 838.
necessity for travel to be stated, 837.
orders involving payment of, 838.
payments of, by Pay Department, 848, 849.
rate, 837–840.
restriction on payment of, 687, 846.
river and harbor works, 1110.
route, 837–840.
sea travel, 841.
tables of distances, 840.
Military Academy (see *Cadets*):
academic staff, 1458–1460.
adjutant, 1477.
admission, qualifications for, 1481, 1482.
appointment of cadets on graduation, 1486–1488.
appointments of officers and professors, 1463.
army service men, 1509–1511.
assistant librarian, 1476.
assistant professors, 1474, 1475.
band, 1508.
Board of Visitors, 1497–1500.
chapels, 1513.
chaplain, 1461.
Military Academy—Continued.
commandant of cadets, 1466, 1469.
commissary of cadets, 1478.
contingent funds, 1506, 1507.
corps of cadets, 1479–1496.
courts-martial for trial of cadets, 1495.
Cullum memorial, 1512.
details of officers, 1464, 1465.
examination for admission, 1482.
graduation of cadets, 1486–1488.
hazing, 1496.
instruction of cadets, 1489–1494.
leaves of absence, 1501.
librarian, 1476.
master of the sword, 1472, 1473.
organization, 1458–1478.
physiology, instruction in, 1492, 1493.
professors, 1458–1460.
professor of law, 698, 1459.
promotion of graduates, 1486.
purchases, 1505.
quartermaster of cadets, 1478.
restriction on details, 1465.
selection of officers for detail, 1464, 1465.
study on Sunday, 1491.
superintendent, 1458, 1463, 1466–1468.
supervision, 1462.
Military Commissions, 1862. (See *Military Tribunals.*)
Military Establishment:
composition, 495–508.
militia, 495, 496.
national forces, 495.
peace, 499–508.
Regular Army, 496, 497, 499–508.
Volunteer Army, 495, 497, 498, 517–528, 543–554.
war, 509–514.
Military Force (see *Employment of Military Force*):
restriction on employment of, 2093.
Military Headquarters:
location, 574.
clerks, 572, 573.
messengers, 572, 573.
Military Occupation of Cuba, 2112.
Military Secretary, 556.
appointment, 556.
rank, 556.
pay and allowances, 556.
Military Storekeepers:
quartermasters' department, 706.
ordnance, 1169–1171.
Military Telegraph Lines (see *Telegraph*, and *Telegraph Lines*):
Alaska, lines in, 1231.
commercial business over, 1232.
construction, 1227, 1231.
injuries to, penalty, 1234.
receipts to be turned into Treasury, 1232, 1233.
Military Tribunals (see *Courts-Martial*):
arraignment, 1808.
arrest and confinement, 1782–1788.
behavior of members, 1806.
challenges, 1802.
charges and specifications, 1785, note 2; 1786.
closed sessions, 1830.
contempt of court, 1807.
continuances, 1803.

Military Tribunals—Continued.
- counsel for accused, 1800.
- courts of inquiry, 1863–1869.
- depositions, 1828.
- District of Columbia militia, 1761–1765.
- evidence, 1814–1828.
- fees of witnesses, 1812–1814.
- findings, 1829.
- general courts-martial, 1789–1794.
- inferior courts-martial, 1851–1861.
- interpreters, 1801.
- judge-advocates, 1798–1800.
- jurisdiction, 1795–1797.
- limits of punishment, 1838.
- military commissions, 1862.
- militia, 1688–1690.
- oath—
  - judge-advocate, 1805; 85 A. W.
  - member, 1804; 84 A. W.
  - witness, 1809; 92 A. W.
- record, 1839–1841.
- refusal of civilian witness to testify, 1811.
- reporters, 1801.
- reports of prisoners, 1787.
- reviewing authority, 1843–1850.
- revision proceedings, 1842.
- sentences, 1831–1837.
- witnesses, 1809–1813.

Militia:
- acceptance in volunteer service, 520, 523.
- active service, 1669–1674.
- apportionment, 2021.
- appropriations for, 1691–1694.
- armament, 1691–1706.
- artillery, 1659.
- cavalry, 1659.
- command, 2.
- composition, 1650–1655.
- courts-martial, fines, etc., 1688–1690.
- discipline, 1662, 1663.
- District of Columbia, 1707–1776. (See *District of Columbia Militia.*)
- enrollment, 1650–1655.
- equipment, 1691–1706.
- exemptions, 1655.
- expenses of enrollment, 1679, 1680.
- field organization, 1675–1678.
- forage, etc., 1684.
- half pay, pension, etc., 1685–1687.
- horses, use of, 1684.
- infantry, 1676.
- instruction, 1662, 1663.
- organization, 1656–1661.
- pay, 878a.
- pay, rations, etc., 1681–1684.
- power of Congress over, 2015.
- property returns, 1690.
- rations, etc., 1681–1684.
- returns, 133, 1664–1668.
- service in volunteers, 520.
- subject to Articles of War, 2021.
- Territorial, 1777–1781.
- travel allowances, 1679, 1680.

Mines:
- injuries to, penalty, 1090.

Minors:
- enlistment of, 672, 673.

Mints:
- depositories of funds, 287, 288.

Mississippi River Commission, 1029–1043.
- annual report, 1036.
- composition, 1030.
- duties, 1032–1034.
- engineer secretary, 1035.
- material for improvements, 1037.
- piers and cribs, 1039.
- South Pass, 1040–1042.
- water gauges, 1043.

Missouri River Commission, 1044–1048.
- annual report, 1048.
- composition, 1045.
- duties, 1046.
- supervision of expenditures, 1047.

Morning Gun:
- provision for, 1184.

Mounted Pay, 810.

National Banks:
- depositories, 289, 290.
- notes of, legal tender, 307.

National Cemeteries, 2448–2465.
- acquisition of lands, 2449–2451.
- City of Mexico, 2463, 2464.
- criminal offenses, 2461, 2462.
- encroachments by railroads, 2465.
- headstones, 2455, 2456.
- inclosures, 2455–2457.
- interments, 2458–2460.
- jurisdiction, 2461, 2462.
- maintenance, 2448.
- registers, 2457.
- superintendents, 2452–2454.

National Forces:
- composition, 495, 496.

National Homes (see *Soldiers' Home*):
- accounts, 2316–2318.
- admission of inmates, 2325.
- annual report, 2296.
- appointment of officers, 2298.
- appropriations, 2305, 2308, 2309.
- board of managers, 2287–2291.
- bonds, 2292, 2294, 2303, 2304.
- branch homes, 2298–2304, 2319, 2320.
- discipline, 2332.
- election of—
  - managers, 2288.
  - officers, 2289.
- establishment of branch homes, 2319, 2320.
- estimates and appropriations, 2305–2309.
- expenditures, 2310–2315.
- expenses of managers, 2290.
- franking privilege, 2338.
- general officers, 2289–2293.
- general treasurer, 2292–2294.
- insane patients, 2331.
- inspection, 688, 2295.
- jurisdiction over lands, 2339.
- managers, 2287–2291.
- medical officers, 2299.
- officers of branch homes, 2298–2304.
- ordnance, issues of, 2334, 2335.
- out-door relief, 2327.
- pensions to inmates, 2328–2330.
- public documents, 2337.
- purchases, 2310–2315.

National Homes—Continued.
  reduced rates of transportation to inmates, 2336.
  salaried officers, 2291.
  salaries to be classified, 2300.
  supplies, how procured, 2310.
  transfer of inmates, 2326.
  travel expenses, 2302.
National Military Parks:
  Antietam battlefield, 2414, 2422.
  arrests of trespassers, 2354.
  Chattanooga National Military Park, 2355–2382.
  Chickamauga and Chattanooga Park, 2355–2382.
  ejectment from purchased lands, 2355.
  general requirements, 2349–2355.
  Gettysburg National Park, 2379–2395.
  injuries to monuments, trees, etc., 2351.
  maneuvers, use for, 2349.
  protection of, 2351–2355.
  regulations for use, 2350.
  Shiloh National Military Park, 2396–2406.
  superintendents, power to arrest, 2354.
  trespassing, hunting, shooting, etc., 2352, 2353.
  Vicksburg National Military Park, 2407–2414.
National Parks, 2423–2447.
  Yellowstone National Park, 2423–2447.
Native Troops:
  Philippine Islands, 501–504; p. 1064.
  Porto Rico, 505; p. 1065.
Naturalization (see *Citizenship*):
  alien enemies, not admitted, 1888.
  alien, honorably discharged, 1882, 1883.
  aliens of African descent, 1886.
  children of declarant, 1885.
  children of naturalized persons, 1889.
  declaration of intention, 1881.
  minors, 1884.
  police court of District of Columbia, 1890.
  procedure, 1880, 1881.
  protection to naturalized citizens, 1878, 1879.
  seamen, 1891.
  widow of declarant, 1885.
Navigable Waters of the United States, 1091–1150. (See *River and Harbor Works.*)
  deposits in prohibited, 1124.
  floating logs and timber, 1128, 1129.
  obstruction of, by sunken vessels, 1132a, 1133.
  obstructions to navigation, 1122.
  rivers, 1091–1097.
Navy Department (see *Marine Corps*):
  administration of oaths, 450.
  detail of naval officers, 448.
  establishment, 418.
  Marine Corps, 419–446.
  punishments on war vessels, 449.
  supervisor of New York Harbor, 1136, 1137, 1143.
  transfers to Navy, 447.
Neutrality:
  enforcement of, 2069–2079.
Newspapers (see *Pamphlets*):
  purchase of, 56, 57.
  restriction on payments for, 181.
New Year's Day, 46.
New York Harbor:
  arrests, 1139, 1146.
  boats carrying deposits, 1138.
  bribery, 1140.
  deposits 1134–1146.
New York Harbor—Continued.
  disposition of dredged material, 1142.
  fishing in channel forbidden, 1144.
  inspectors, 1139, 1140.
  penal clauses, 1145.
  permits for deposits, 1136, 1141.
  supervisor, duties, 1136, 1137, 1143.
Northern Pacific Railroad, 2064.
Nurse Corps:
  allowances, 926–928; p. 1057.
  appointments, 925; p. 1057.
  chief nurses, 925; p. 1057.
  composition, 925: p. 1057.
  leave of absence, 927; p. 1057.
  medical attendance, 927; p. 1057.
  nurses, 927; p. 1057.
  pay and allowances, 858–861, 926–928; p. 1057.
  qualifications, 925; p. 1057.
  reserve nurses, 925; p. 1057.
  subsistence, 927; p. 1057.
  superintendent, 925; p. 1057.
  travel expenses, 928; p. 1057.
Nurses (see *Nurse Corps*):
  pay, 858–861, 926–928; p. 1057.
  rations, 773.
Oaths:
  administration, 49–51, 69, 128, 159–161.
  administrative purposes, 1816.
  Court of Claims, 374.
  courts of inquiry, 1865; 117 A. W.
  custody of, 162.
  fees for administration, 49, 50, 128.
  form of official, 155, 158.
  judge-advocate, 1805; 85 A. W.
  member of court, 1804; 84 A. W.
  navy, 450.
  postmasters, 314, 315.
  witness, courts-martial, 1809; 92 A. W.
  witnesses in claims cases, 386.
Obstructions to Navigation, 1115. (See *Engineer Department*, and *Navigable Waters of the United States.*)
Office (see *Commissioned Officers*, and *Salaries*):
  oaths of, 155–162.
  consideration for obtaining, prohibited, 178.
  removal, report to Congress, 180.
  restrictions on, 151, 152, 166–169.
  Statutes at Large, preservation, 182.
  failure to make returns, 171.
Officer in Charge of Public Buildings and Grounds:
  telegraph line to Capitol, 101, 102.
Official Letters (see *Letters*):
  free transmission, 320–327.
  penalty envelopes, 100, 320–327.
  registry, 327.
  special delivery, 318, 319.
Official Register, 92a.
Opinions:
  Attorney-General, 336–339.
  heads of Departments, 2.
Orders for Travel:
  duty to be stated, 838.
  necessity to be stated, 837.
  routes, 837–840.
Ordnance:
  issues to colleges, 1296.

Ordnance and Fortification (see *Board of Ordnance and Fortifications*):
  board of, 1209–1217.
Ordnance Department (see *Chief of Ordnance*, *Board of Ordnance and Fortifications*, and *Staff Departments*):
  accountability, 1172–1176.
  ammunition for morning and evening gun, 1184.
  arms, armories, and arsenals, 1190–1204.
  artificers, 1165.
  board for testing rifled cannon, 1185.
  calibers, etc., to be furnished to makers, 1186.
  chief ordnance officers, 1161.
  clerical force, 134.
  composition, 1151.
  cost of arms for militia, credit of, 614.
  damages, reports of, 1175.
  depots, 1168.
  details, 1154–1156.
  distribution of arms to States, 1195.
  duties, 1166–1168.
  enlisted men, 1162–1165.
  evening gun, 1184.
  examinations for promotion, 1152, 1153.
  expenses of officers at proving ground, 1188.
  extra-duty pay, 742.
  gratuitous issues, 1183.
  historical note, p. 458.
  issues, 1167.
  issues of arms to Executive Departments, 1204.
  issues to National Homes, 2334, 2335.
  issues to States, credits, 1179.
  loans of ordnance, 1182.
  magazine arms, 1202.
  miscellaneous purchases, 1189.
  morning gun, 1184.
  obsolete material, sales, 1177, 1178.
  ordnance sergeants, 1162, 1163.
  ordnance storekeepers, 1158–1160.
  organization, 1151; p. 1059.
  per diem to officers, 1188.
  principal assistant, pay, 1157.
  promotion, fourteen years' service, 591.
  promotions, 1152, 1153.
    under fourteen-year rule, 591.
  proving ground, 1185, 1188.
  purchases, 1169–1171.
  regulations for returns, 1174.
  restriction on payment of freight, 1181.
  returns, 1173, 1174.
  sales of obsolete material, 1177, 1178.
  sale of useless ordnance, 1178.
  sales by States, credits, 1180, 1181.
  smoothbore cannon, sales, 1187.
  testing machine, 1205–1208.
Ordnance Sergeants, 1162, 1163.
Organization:
  tactical, 570, 571.
Outstanding Checks, 309–311. (See *Checks*.)
Pacific Coast:
  advertising and deliveries, 712.
Pack Animals:
  restriction on purchases, 728.
Pamphlets (see *Newspapers*):
  purchase of, 57.
Pardoning Power:
  restriction on, 2.
  where vested, 2.
Pardons (see *Pardoning Power*):
  conditional, 1808, note (p. 700).
  power to grant, 2.
Pay (see *Pay Department*):
  absence with leave, 826–828.
    without leave, 829.
  advances, 812, 813.
  cadets on graduation, 1485, 1488.
  civilian employees, 748.
  claims of States for reimbursement, 223–225.
  commissioned officers, 807–829.
  enlisted men, 862–888.
  extra-duty, 742–747.
  extra, restriction on, 169.
  extra, to volunteers on discharge, 536–539.
  Indian scouts, 506.
  Marine Corps, 429.
  matrons, 857.
  militia, 808, 1681, 1683, 1684.
  mounted, 810.
  native troops, 502–504, 505.
  nurses, 858–861.
  officers in arrears, 170.
  troops, 800–804.
  volunteers, 527, 528, 808.
Pay Department (see *Accounts*, and *Disbursing Officers*):
  absence, pay during, 826–828.
  accounts, settlement of, 216, 217.
  additional paymasters, 793, 794.
  advances of pay, 812, 813.
  allotments, 871–875.
  bonds, 798.
  certificates of merit, 883.
  check, payments by, 803.
  clerks, 805, 806.
  command of officers, 569, 804.
  commutation of quarters, 830–835.
  composition, 792–794.
  continuous-service pay, 869, 870, 1375.
  deductions, 850–856.
  deposits, 879–882.
  details, 796, 797.
  enlisted men, 862–888.
  examinations for promotion, 795.
  express, payments by, 803.
  higher command, 814, 815.
    pay of, 814, 815.
  historical note, p. 347.
  longevity pay, 818–823.
  matrons, 857.
  mileage, 837–849.
  nurses, 858–861; p. 1057.
  organization, 792–794; p. 1058.
  payments to troops, 800–804.
  promotions, 795.
  renewal of bonds, 798.
  retired enlisted men, 876–878.
  retired officers, 824.
  restriction on allowances, 817.
  stoppages, 852–856.
  travel allowances, 837–849.
  travel pay on discharge, commissioned officers, 850.
    enlisted men, 887, 888.
  volunteer paymasters, 793, 794.
  volunteers, 823a.

Pay of Commissioned Officers, 807–829 (see *Commissioned Officers*):
  advances, 812, 813.
  absence, 826–828.
  deductions, 850–856.
  foreign service, etc., 816.
  higher command, 814, 815.
  longevity pay, 818–823.
  militia, 808.
  mounted officers, 810.
  rates, 807–811.
  retired officers, 824, 825.
  stoppages, 850–856.
  travel, 850, 851, 1336–1338.
  volunteers, 823a.
Pay of Enlisted Men (see *Pay, Pay Department,* and *Payments*):
  absence on furlough, 884.
  absence, pay during, 884.
  absence without leave, 885.
  allotments, 871–875.
  assignments prohibited, 898.
  captivity, pay during, 886.
  certificates of merit, 883, 1358, 1359.
  clothing allowances 893, 894.
  continuous service, 869, 870.
  cooks, 1457.
  damages to arms, 897.
  deductions, 889–898.
  deposits, 878–882.
  gunners, 1444.
  increase for foreign service, 866.
    war, 865.
  Indian scouts, 864.
  native troops, 503, 504; p. 1065.
  rates, 862–864.
  re-enlistment pay, 868, 1374.
  retained pay prohibited, 867.
  retired pay, 876–878.
  sea travel, 888.
  stoppages, 889–898.
  travel pay on discharge, 887, 888.
Paymasters. (See *Additional Paymasters.*)
Paymaster-General (see *Staff Departments*):
  duties, 799.
  tables of distances, 840.
Paymaster-General's Office:
  clerical force, 134.
Paymasters' Clerks:
  appointment, 805.
  employment, 805.
  enlisted men as, 805.
  pay, 806.
  travel allowances, 847.
Payments (see *Pay Department*):
  by check, 803.
  by express, 803.
  clerks in Departments, 27.
  enlisted men, 800–804.
  frequency of, to troops, 800–804.
  officers, monthly, 836.
  troops, 800–804.
  volunteers, 527, 528, 878a.
Peace Establishment, 499–508. (See *Regular Army.*)
Penalty Envelopes, 100, 320–327. (See *Envelopes.*)
  character, 320, 321.
Penalty Envelopes—Continued.
  contents, 320.
  franking, 320–327.
  return envelopes, 100, 326.
  Senators, members, etc., may use, 100, 322–323.
  use, 100, 320–327.
Penitentiary (see *Prisoners*):
  confinement in, 1837.
Pensions:
  accrued and unclaimed, 2232–2234.
  agencies, inspection of, 2247.
  army nurses, 2155, 2156.
  arrears, 2178–2185.
  assignments, 2235, 2236.
  attorneys' fees, 2203–2211.
  children, 2137–2147.
  civil employees, 2262.
  civil, prohibited, 30.
  commencement, 2178–2185.
  Commissioner, duties, 2113–2115.
  continuance of, 2258.
  crimes in connection with, 2253–2256.
  declarations in pension cases, 2189–2201.
  dependent pension law, 2151–2154.
  evidence and declarations, 2189–2201.
  examining boards, 2237–2246.
  general pension law, 2116–2136.
  in addition to military pay method, 2261.
  increase of, 2186–2188.
  Indian wars, 2167–2174.
  inmates of National Home, 2328–2330.
  inmates of Soldiers' Home, 2280–2282.
  investigations, 2249–2252.
  limitation in filing claims, removal of, 2202.
  Mexican war, 2157–2166.
  nurses, army, 2155, 2156.
  one only to be drawn, 2257.
  payment, 2212–2231.
  removal of limitation, 2202.
  special acts granting, 2175–2177.
  suspension of, 2248.
  unclaimed, 2232–2234.
  vested right to, 2248.
  widows, 2137–2147.
  withholding of, forbidden, 2259, 2260.
Per diem to Officers at Proving Ground, 1188.
  on Board of Ordnance, etc., 1217.
Periodicals (see *Newspapers*):
  purchases of, 56–58.
Permanent Appropriations, 276.
Permanent Establishment, 499–508.
Philippine Islands, Native Troops, 501–504; p. 1064.
  allowances, 502–504.
  enlisted men, 501.
  native officers, 503.
  officers, 502, 503.
  organization, 501.
  pay, 502–504.
  restriction on number, 501.
  strength, 501.
Political Contributions (see *Civil Service*):
  prohibition, 172–177.
Pontoons:
  forms, etc., prescribed by Chief of Engineers, 971.

Poor Debtors:
  discharge of, 248, 249.
Porto Rico:
  native troops, p. 1065.
Porto Rican Regiment:
  allowances, 505,
  enlisted men, 505.
  officers, 505.
  pay, 505.
Posse comitatus (see *Employment of Military Force*):
  Army not to be employed as, 2103.
Postage:
  rates of, 317.
Post Bakeries, 1550, 1628. (See *Bakeries.*)
Post Commander:
  summary court records, 701.
Post Commissary-Sergeants:
  allowances, 762.
  duties, 762.
  number, 762.
  pay, 762.
  selection, 762.
Post Exchange:
  buildings, use of, 1551.
  purchases for, 715.
    restriction, 1551.
  sale of liquor, etc., 1630.
Post Gardens, 1551.
  purchases for, 715.
Post-Offices at Military Camps, 329–331.
Post-Office Department (see *Postmaster-General*):
  establishment, 313.
  franking privilege, 320–325.
  mail-matter classification, 316.
  postage, rates, 317.
  postmasters' oaths, 314, 315.
  penalty envelopes, 100, 320–327.
  purchases of envelopes, 328.
  registry of official letters, 327.
  special delivery, 318, 319.
Post Quartermaster-Sergeants:
  allowances, 707.
  appointment, 707.
  duties, 707.
  examination, 707.
  number, 707.
  pay, 707.
  selection, 707.
Post Schools (see *Schools*, and *Service Schools*):
  furniture, 714.
  paper, 714.
  purchases for, 714.
  text-books, 714.
Post Traders, 1626.
Postage:
  rates of, 317.
  special-delivery stamps, 318, 319.
Postmaster-General (see *Post-Office Department*):
  contracts for envelopes, 328.
  post-offices at military camps, 329–331.
  purchases of envelopes, 328.
Postmasters:
  oath of office, 314.
Posts (see *Barracks*):
  bakeries, 1550, 1628.
  buildings, 1621, 1623, 1624.
Posts—Continued.
  coast artillery, 1625.
  contracts for, restriction on, 1623.
  exchanges, 1629.
  headquarters at, 574.
  permanent barracks, 1621.
  restriction on expenditures, 1549, 1621, 1623–1625.
  schools, 1627.
  title papers, 1622.
  traders, 1626.
Potomac Park, 981–983.
President (see *Executive Departments*):
  advances of funds to—
    disbursing officers, 617.
    persons delinquent in submitting accounts, 640.
    persons in military and naval service, 617, 812.
  apartments for Chief of Engineers as superintendent of Washington aqueduct, 998.
  appointing power, 7–9.
  appointment of—
    board of visitors, Military Academy, 1497.
    commanding general of militia of District of Columbia, 1713.
    Commissioner of Pensions, 2113.
    master armorers, 1190.
    officers and professors at Military Academy, 1463.
    pension agents, 2212.
    staff officers of militia of District of Columbia, 1714.
    superintendents of armories, 1190.
  army retiring board, 1306, 1310–1313.
  assignments to command, 566–569.
  assistants to engineer commissioner of District of Columbia, 1016.
  authority to—
    accept quotas of troops of the States and Territories, etc., 523.
    appoint additional paymasters, 793.
      assistant treasurers, 286.
      chaplains, 1258.
      Civil Service Commissioners, 146.
      commissioner to prepare a new edition of the Revised Statutes, 469.
      commissioners to revise, etc., general laws of the United States, 454.
      general officers, 559, 560.
      natives to commissions, 503.
      officers of Regular Army in volunteer organizations, 521.
      officers to vacancies in chief of staff corps or department, 575.
      Postmaster-General, 313.
      Solicitor-General, 333.
      staff officers for corps, division, and brigade commanders, 532.
      or continue in service, officers of volunteer staff, 548.
      volunteer surgeons, 900.
    assign an officer to act as adjutant-general, militia of District of Columbia, 1715.
    call for volunteers, 517.
    call out militia in case of invasion, etc., 1669, 2016–2020.
    close ports of entry, 2045.
    confer commissions by brevet, etc., 1342, 1343.

President—Continued.
  authority to—
    continue, for service in Philippine Islands, five volunteer signal officers, 1219.
    designate officer to act as chief of bureau, 121.
      officer to act in absence of Secretary of War, 119.
      officer to act as superintendent of State, War, and Navy Building, 139.
      supervisor of New York Harbor, 1143.
    detail naval officers for service in War Department, 448.
      officers as Indian agents, 1333.
      officers to college duty, 1288–1291, 1294.
    direct duties of Marine Corps, 443.
      duties of Paymaster-General, 799.
      duties, etc., of cadets, 1490.
    enlist Indians, 506.
      natives in Philippine Islands, 501; pp. 1064, 1065.
    fill vacancies in Marine Corps, 422.
    grant certificates of merit, 1358.
      conditional pardon, 1808, note (p. 700).
    increase sergeants in engineer companies, 969.
      corporals, 969.
      first-class privates, 969.
      second-class privates, 969.
      bonds of disbursing officers, 592.
      bonds of district attorneys, collectors of customs, etc., 593.
      infantry companies, 1451.
    investigate Isthmus of Panama, etc., 1082, 1083.
    issue rations to Indians, 774.
    license or permit commercial intercourse, 2032.
    maintain enlisted force at maximum strength, etc., 1453.
    make rules for Washington Aqueduct, 996.
      and publish regulations for Army, 487.
    order discharge of debtor, 249.
    organize Army corps, 529, 571.
      militia when called into service, 1675–1677.
      Porto Rican regiment, 505.
    prescribe limit of punishment, 1838.
      kind, quantity, and components of rations, 769, 770.
      military regulations for discipline of Marine Corps, 444.
      system of examination of enlisted men for promotion, 1278.
      system of examination of officers for promotion, 1274.
      uniform of the Army, etc., 749.
    procure assent of State to purchase of land, 1595.
      releases from persons holding lands for United States, 1596.
    promote absent officers, 588.
    provide cemetery near City of Mexico, etc., 2463, 2464.
    raise volunteers, under act of March 2, 1899, 543.
    regulate admissions to the civil service, 142.
    remove, etc., unauthorized inclosures to public lands, 1609.

President—Continued.
  authority to—
    require advice and opinion of Attorney-General, 336.
    select and detail chief of artillery, 1431.
      governors and officers of Soldiers' Home, 2268.
    specify period for which militia shall serve, 1673.
    suspend commercial intercourse, 2029.
    temporarily increase the Army, 515.
    transfer engineers, 960.
  Board of Ordnance and Fortifications, appointment of civilian member of, 1213.
    to determine strength and value of iron, steel, etc., appointment of, 1205.
  brevets, 1342, 1343.
  California Débris Commission, appointment of, 1049.
  chaplain at Military Academy, appointment of, 1461.
  chaplains, authority to appoint, 1258.
  clothing allowance, 749.
  collection of duties on imports, 2042, 2046.
  commercial intercourse, authority to license and permit, 2032.
    authority to suspend, 2029.
  commissions, 10.
  Commissioners of District of Columbia, appointment of, 1011.
  courts-martial—
    appointing power, 1789.
    detached marine officers serving on, 1794.
    reviewing authority, 1831, 1834, 1845–1849.
  detail of retired officer as adjutant-general, District of Columbia militia, 1323, 1716.
  discharge of poor debtors, 248, 249.
  District of Columbia militia, 1712–1716.
  employment of military force to—
    aid in execution of judicial process, etc., 2063.
    apprehend, etc., persons in Indian country, 2026.
    arrest absconding Indians, etc., 2028.
    collect customs duties, 2044.
    compel foreign vessels to depart, 2086.
    preserve neutrality, 2085.
    protect rights of discoverers, etc., of guano deposits, 2101.
    protect timber on public lands in Florida, 2069.
    remove intruders from Indian reservations, 2023.
    remove trespassers upon public lands, 2070.
    remove unlawful inclosures to public lands, 2070.
  employment of retired officers on active duty, 1322.
  erection of temporary forts in case of emergency, 1088.
  examination of enlisted men for promotion, 1278–1282.
  examination of officers for promotion, 583, 1274–1277.
  executive powers, 1.
  extradition, protection of accused person, 2090.
  guano islands, protection of rights of discoverers, etc., 2101.

President—Continued.
Indian affairs, additional security from disbursing officers, 1915.
agencies, consolidation of, 1917.
transfer or discontinuance of, 1918.
agents, appointment of, 1898.
Army officers detailed to act as, 1903, 1904.
and superintendents, dispensing with services of, 1916.
country, removal of persons found therein, 2001.
inspectors, appointment of, 1896.
lands, disposal of dead and fallen timber, 2000.
removal of unauthorized settlers on, 1952.
reservations, removal of intruders from, 2023.
tribes—
abrogation of treaty with, 1923.
authority to prohibit introduction of goods into, 1956.
general superintendence over certain, 1944.
mode of disbursements, 1932.
payment of annuities in goods, 1925.
Indians, permission to enter State of Texas, 2010.
Light-House Board, appointment of, 1021.
Light-houses, detail of officer to construct, etc., 1022.
limit of punishment, authority to prescribe, 1838.
under 17th Article of War, 755, 1649.
militia—
apportionment of, among States, 2021.
authority to specify time of service of, 1673.
calling forth, 1669–1674, 2016–2020.
District of Columbia, appointment of commanding general of, 1713.
District of Columbia, appointment of staff officers of, 1714.
employment of, in execution of judicial process, 2063.
organization of, when called into service, 1675–1677.
Mississippi River Commission, appointment of, 1030.
Missouri River Commission, appointment of, 1045.
National Home for Disabled Volunteer Soldiers, board of managers, 2287.
notification of appointments, 11.
officers dropped for desertion by, 1329, 1230.
pardon, conditional, 1808, note (p. 700).
pardoning power, 2.
power as commander in chief, 2.
power of, to fill temporary vacancies, 13, 15, 16.
ration, power to prescribe, 769.
rations to Indians, 774.
regulations for admission to civil service, 142.
release of citizens imprisoned by foreign governments, 1879.
removal from office, 4.
removal of custom-house, 2043.
retirement of officers, 1297, 1298, 1301, 1305.
reviewing authority, 1845–1848.
rules and regulations for naval hospital at Hot Springs, 938.
sale of damaged or unsuitable property, 1641.
sale, etc., of abandoned and useless military reservations, 1616.

President—Continued.
speedy arrest and trial, 2062.
special assignment to duty according to brevet rank, 566.
succession to office, 5–7.
suspension of commercial intercourse, 2029.
term of office, 3.
treaty-making power, 7.
Volunteer Homes, 2287.
when authorized to increase the Army, 509.
when authorized to increase the number of second lieutenants, 511.
Printing:
how executed, 716.
Priority of Debts Due United States, 245–247.
Prisoners (see *Penitentiary*):
confinement, 1783–1786.
release without authority, 1787, 1788.
Private Property:
claims for, lost, 221, 222.
Proceeds of Sales (see *Sales*, and *Sales of Subsistence*):
disposition, 611–616.
reports of, 75.
subsistence, 785–787.
Professors at Military Academy (see *Military Academy*):
allowances, 1471.
appointment, 1463.
assignment of professor of law, 1459.
assistant professors, 1474, 1475.
command, 1470.
leaves of absence, 1501.
pay, 1471.
retirement, 1473.
Property (see *Accountability*, *Accounting Officers*, and *Property Accountability*):
accountability, 1631–1636.
arms, damages to, 1638.
concealment, 661.
condemned, disposition of, 1641.
damage to, 1637–1640.
damaged, disposition, 1641.
deficiency in, 1637–1640.
disposition, 1631.
embezzlement, 660, 1642.
exchange, without authority, 1646.
larceny, 1642, 1645.
losing, spoiling arms, etc., 1647.
lost, claims for, 221, 222.
offenses in connection with public, 1642–1649.
ordnance, accountability, 1172–1176.
regulations for returns of, 1636.
robbery, 1645.
sales of damaged, 1641.
selling, losing, etc., 1647–1649.
Signal Corps, regulations for, 1228.
stolen, receiving, 1643.
transportation, 720, 725–727.
unlawful sale, 1646.
wrongful conversion, 1644.
volunteer officers, 540.
Property Accountability (see *Accountability*, and *Accounting Officers*):
certificate of charges, 1633, 1634.
company commander, 1632.
oaths, administration of, 1639.

- **Property Accountability**—Continued.
  - regulations, 1636.
  - returns, 1633, 1635.
- **Provisional Regiment in Porto Rico**, p. 1065.
- **Public Animals:**
  - number of, restriction, 728, 730–732.
  - purchases, 729–732.
  - restriction on purchases, 728–732.
- **Public Buildings** (see *Buildings*, *Contracts*, and *Public Buildings and Grounds*):
  - closing for death of ex-officer prohibited, 98.
  - draping in mourning prohibited, 97.
- **Public Buildings and Grounds** (see *Buildings*, and *Public Buildings*):
  - ailanthus trees, 985.
  - annual report, 987.
  - Commissioner of, 982.
  - control in Chief Engineer, 978.
  - employees, restriction, 980.
  - estimates, 979.
  - extra pay prohibited, 993.
  - furniture for Executive Mansion, 988.
  - inventory, annual, 989.
  - Potomac Park, 981–983.
  - propagation of plants and shrubs, 986.
  - supervision, 978.
  - Washington Monument, 990–992.
  - watchmen in public squares, 984.
- **Public Lands** (see *Acquisition of Lands*, and *Lands*):
  - acquisition, 1593–1599.
  - designation, 1581–1583.
  - disposition of, 1581–1592, 1614–1620.
  - donations of sites for fortifications, 1087.
  - entry, 1581–1583.
  - fortifications, sites for, 1086–1088.
  - homesteads, 1584–1592.
  - inclosure without authority, 2069, 2070.
  - leases, 1620.
  - offenses in connection with, 1602–1614.
  - purchases for river and harbor works, 1106.
  - removal of trespassers, 2071.
  - timber, unlawful felling, 2069.
- **Public Moneys** (see *Accounts*, *Funds*, and *Treasury Department*):
  - advances, 617, 618.
  - assistant treasurers, 286.
  - checks, 309–311.
  - conversion, 646.
  - deposit, 299–303, 606–610.
  - depositories, 289, 290.
  - disbursing agents, 291–295a.
  - embezzlement, 660.
  - exchanges, 609, 610.
  - failure to deposit, 649, 650.
  - failure to safely keep, etc., 646, 647.
  - inspection of disbursements, 685, 686.
  - larceny, 660.
  - loaning, 646.
  - mints to be depositories, 289, 290.
  - national banks as depositories, 289.
  - outstanding checks, 309–311.
  - short payments, 644.
  - subject to draft of Treasurer, 298.
  - transfers of funds, 296–298.
  - Treasurer of the United States, 283, 284.
  - unlawful depositing, 645.
  - unlawful receipt of, by banker, 654, 655.
- **Public Works** (see *Engineer Department*):
  - anchoring vessels, 1126, 1127.
  - bridges over navigable waters, 1114–1117.
  - canals, operation of, 1111–1113.
  - contracts and purchases, 1104–1106.
  - deposits in navigable waters, 1124.
  - estimates, 71.
  - harbor lines, 1118–1121.
  - injuries to, 1122–1132.
  - inspection of, 680, 686.
  - obstructions to navigation, 1122–1132.
  - offenses in connection with—
    - anchoring vessels, 1126.
    - deposits in navigable waters, 1124.
    - logs, floating, 1128, 1129.
    - obstructions to navigation, 1122.
    - penal clauses, 1123, 1127.
    - prosecutions for, conduct of, 1132.
    - timber, floating, etc., 1128, 1129.
    - use of public works, 1125.
  - permits to use, 1125.
  - river and harbor works, 1098–1110.
  - use of, permits, 1125.
- **Punishment:**
  - limits of, 1838.
  - restriction on, pp. 1067–1073.
- **Purchase of Discharges**, 1386.
- **Purchases** (see *Contracts*):
  - advertising, 1529–1533.
  - American material preferred, 1542.
  - artillery horses, 1544, 1545.
  - assignments, 1557.
  - bakeries, 1550.
  - bids and proposals, 1534–1538.
  - bonds to secure payment for labor and materials, 1576, 1577.
  - buildings, erection and repair, 1522.
  - cavalry horses, 1544, 1545.
  - control of Secretary of War, 1520.
  - draft animals, 1546.
  - drays, 729.
  - eight-hour law, 1572–1575.
  - envelopes, by Postmaster-General, 328.
  - from Indians, 718.
  - gardens, 1551.
  - general provisions, 1520–1528.
  - Indians, purchases from, 1554.
  - inspection of fuel, 1578–1580.
  - land purchases, 1523, 1524.
  - medical supplies, 932, 933.
  - Military Academy, 1505.
  - names of contractors, 1555.
  - offenses in connection with, 1558–1566.
  - ordnance, 1169–1171.
  - preparation and execution of contracts, 1539–1541.
  - restriction on expenditures, 1549.
  - schools, 1550.
  - seagoing vessels, 729.
  - ships, 729.
  - steel, purchases of, 1553.
  - the returns office, 1567–1570.
  - transportation, means of, 1547.
    - of stores, 1548.
  - wagons, 729.
  - when made, 1544.
- **Quarantine:**
  - enforcement of 2068.

Quartermaster-General (see *Quartermaster's Department*):
  absence of, performance of duty, 121.
Quartermaster-General's Office:
  clerical force, 134.
Quartermaster's Department (see *Staff Departments*):
  advertisements, 712.
  animals, procurement of, 728–732.
  appointments, 578.
  Antietam battlefield, supervision, 2422.
  bakeries, 714.
  barracks and quarters, 734–739.
  bond-aided railroads, 722, 725.
  civilian employees, 748.
  clothing, 749–757.
  clothing, purchases,717.
  composition, 702.
  deduction from mileage accounts, 723.
  details, 704, 705.
  duties, 708–711.
  emergency purchases, 713.
  enlisted men, 707.
  examinations for promotion, 703.
  extra-duty pay, 742–747.
  forage, 740, 741.
  fuel, 740, 741.
  general army service men, 1509–1511.
  historical note, p. 290.
  horses, 728–732.
  Indians, purchases from, 718.
  land-grant railroads, 722, 725.
  military storekeeper, 706.
  officers not to trade, 719.
  organization, 702; p. 1054.
  post quartermaster-sergeants, 707.
  printing, 716.
  procurement of supplies, 708–710, 712–719.
  promotions, 703.
  public animals, 728–732.
  purchases, 712–719.
  quarters, 734–739.
  returns of clothing, etc., 751.
  schools, purchases for, 714.
  subsistence duty of officers, 711.
  supplies, 708–710, 712–719.
  tables of distances, 724.
  transportation, 720–727.
  veterinarians, 733.
  volunteer quartermasters, retention of, 702, note.
  working parties, 742–747.
Quarters (see *Commutation of Quarters*):
  absent officers, 739.
  allowance, 738, note.
  commutation, 830–835.
  furnished to officers in kind, 738.
  hospital stewards, 736, 931.
Rank (see *Relative Rank*):
  brevet, 1342–1347.
  command of detachments, 551; 122 A. W.
  medical officers, 901.
  militia officers, 1658.
  relative, Army and Navy, 564.
  volunteers, 562.
Rates of Postage, 317.
  soldiers' letters, 317.
Rations (see *Subsistence Department*):
  allowance to enlisted men, 771, 772.
  coffee and sugar, 775–777.
  commutation, 776, 777.
  components, 769, 770.
  emergency, 770.
  field, 770.
  garrison, 770.
  Indians, 774.
  issues, 770–777.
  marines, 439–441.
  matrons, 773.
  meat components, 770.
  nurses, 773.
  on transports, 770.
  prescribed by President, 769.
  sales, 779.
  substitutions, 770.
  sugar and coffee, 775–777.
Rear-Admiral:
  relative rank, 564.
Receiving Embezzled Money or Property, 661.
Receiving Stolen Property, 1643.
Recess Appointments, 8, 9, 163, 164.
  salaries, 163, 164.
Record and Pension Office:
  certificates of service in telegraph corps, 1257.
  clerical force, employment, 134, note; 1240.
  composition, 1236.
  duties, 1235, 1237–1239.
  establishment, 1235.
  muster rolls of volunteers, etc., 526, 1238, 1239
  organization, 1236; p. 1060.
  removal of charge of desertion, 1241–1253.
  remuster of officers, of volunteers, 1254–1256.
  returns and muster rolls of volunteers, 526.
  returns of volunteer regiments, 1238. 1239.
Record of Court-Martial, 1839–1841 (see *General Courts-Martial, Judge-Advocate General's Department*, and *Judge-Advocates of Courts*):
  authentication of, 1839, note.
  copy to accused, 1840.
  disposition, 1839, 1841.
  preparation, 1839.
Recording Clocks, 95.
Records (see *Record of Court-Martial*):
  destruction, forgery, etc., 103–105.
  Executive Departments, 20.
Recovery of Debts, 197. (See *Debts Due United States.*)
Recruiting Service (see *Recruits*):
  bounty, 677.
  details for, 679.
  enlistments, qualifications for, 670, 671.
  fraudulent enlistments, 675.
  minors, enlistment of, 672, 673.
  oath of enlistment, 676.
  re-enlistments, 1373–1375.
  restriction on enlistment, 678,
  term of enlistment, 669.
  unlawful enlistments. 674.
  volunteers, 525.
Recruits (see *Recruiting Service*):
  credit to, at depots, 890.
Red Cross Society, pp. 1044–1047.
Redress of Wrongs, 1852; 30 A. W.
Reduction of War Establishments, 513.

Re-enlistments (see *Enlisted Men*, and *Enlistments*):
  conditions, 868–870, 1373–1375.
  continuous seryice, 869, 1375.
  pay, 868–870, 1374.
  previous service, 1370.
Regimental Court-Martial, 1851, 1852; 30, 81 A. W. (See *Inferior Courts.*)
Regiments:
  cavalry, 1419–1424.
  infantry, 1445–1448.
Register (see *Army Register*):
  official, 92a.
Registry of Official Mail, 328.
Regular Army. (See *Army*):
  composition, 497, 499–508.
  increase in war, 509–512.
  Indian scouts, 506.
  native troops, 501–505.
  reduction at end of war, 513.
Regulations (see *Army Regulations*):
  Army, 487–489.
  accounting, 207, 208.
  canals, use of, 1112, 1113.
  executive departments, 20.
  use of public works, 1112, 1113.
Relative Rank (see *Rank*):
  Army and Navy officers, 564.
    of officers, 565.
Reorganization of Army:
  act for, pp. 1048–1066.
Reporter:
  courts-martial, 1801.
Reports:
  accounts outstanding, 304.
  annual, date of submission, 90.
  chief clerks, 21–23.
  civil engineers, names, etc., 974.
  claims allowed, 220.
  condition of business, 88.
  contingent expenditures, 59, 60.
  delinquent disbursing officers, 188.
  employees, efficiency of, 89.
  illustrations, etc., 91.
  inspection of disbursements, 626.
  maps, illustrations, etc., 91.
  persons employed in public buildings, 269.
  receipts and expenditures, 189.
  rented buildings, 270.
  scope, 86.
Reprieves, 2.
Requisitions for Funds, 61, 209.
Reservations (see *Indian Reservations*, and *Public Lands*):
  abandoned, sale of, 1615–1617.
  breaking fences, 1603.
  disposition of, 1615–1619.
  driving cattle on, 1603.
  establishment, 1583, note.
  grants to municipal corporations, 1618.
  jurisdiction over, 1600, 1601.
  leases, 1620.
  licenses, 1620.
  military posts, 1621–1630.
  penal offenses in connection with, 1602–1614.
  protection of, 1602–1614.
  revocable licenses, 1620.
Reservations—Continued.
  rights of way over, 1619.
  setting fires on, 1612–1614.
  timber, cutting and injuring, 1602.
  unlawful inclosures, 1605–1609.
Residence:
  certificate of (see *Civil Service*), 154.
Resignations of Officers, 1326, 1327.
Restriction on Punishments, pp. 1067–1073.
  strength of Army, p. 1064.
Retained Pay:
  prohibition, 867.
Retired Enlisted Men:
  allowances, 1382.
  pay, 1379.
  service for, 1379–1381.
Retired Officers:
  adjutant-general District of Columbia militia, 1323.
  assignment to duty.
    College details, 1290–1295.
    Soldiers Home, 1320.
    time of war, 1322.
  clerks to, forbidden, 1325.
  college details, 1290–1295.
  copies from files in evidence, 1822.
  details to colleges, 1290–1295.
  eligibility to office, 1321, 1324.
  holding office, restriction, 1324.
  liabilities, 1319.
  pay, 1316.
  restriction on holding office, 1324.
  retirement on actual rank, 1314, 1315.
  rights, 1319.
  status, 1317.
  vacancies caused by, 1318.
Retirement of Officers:
  disability, 1305.
  for age, 1298–1300.
  forty years' service, 1297.
  forty-five years' service, 1298.
  heads of staff departments, 1304.
  limited list, 1301, 1302.
  pay on, 824.
  physical disqualification, 584.
  service for, 1303.
  thirty years' service, 1297.
  unlimited list, 1300–1302.
Retiring Boards (see *Retirement of Officers*):
  composition, 1306.
  disability incident to service, 1311.
    not incident to service, 1312.
  duties, 1308.
  findings, 1309, 1311, 1312.
  Marine Corps, 433.
  oaths, 1307.
  officer entitled to hearing, 1313.
  powers, 1308.
  revision of finding by President, 1310.
Returns (see *Articles of War*, and *Property Accountability*):
  militia, 1664–1668.
  property, 1633–1636.
Returns Office, 1567–1570.
Reviewing Authority (see *General Courts-Martial*):
  approval of sentence, 1843–1847.
  confirmation of sentence, 1845–1849.

Reviewing Authority—Continued.
  dismissal of officer, 1848, 1849.
  President, power of, 1845–1848.
  suspension of sentence, 1850.
Revised Statutes (see *Statutes at Large*):
  accrued rights reserved, 464.
  acts of limitation, 466.
  arrangement and classification, 467.
  certificate, 461.
  copies to be evidence, 459.
  date, 468.
  edition of 1874, 454–468.
    1878, 469–473.
  evidential value, 459, 472, 473.
  new edition (1878), 469–473.
  prima facie evidence of laws, 473.
  prosecutions and punishments, 465.
  repealing clause, 463.
  revision, 454–458.
  scope, 462, 468.
  Supplement of 1891, 476, 477.
    1895, 478.
    1899, 479, 480.
  Supplements, 474–480.
  title of revision, 460.
Revision:
  proceedings in, 1842.
Revocable Licenses, 1620.
Rewards (see *Deserters*):
  apprehension of convicts, deserters, 1407–1409.
Rights of Way Over Reservations, 1619, 1620.
River and Harbor Works (see *Engineer Department*, and *Navigable Waters of the United States*):
  commercial statistics, 1107.
  contracts and purchases, 1104–1106.
  deterioration, reports of, 1108.
  estimates, 71, 76, 1102.
  fishways, 1109.
  preliminary surveys, 1098–1101.
  reports, 132, 1098, 1103.
  surveys, reports, 1098.
  surveys, restrictions on, 1098–1101.
Salaries (see *Office*):
  assistant messengers, 38.
  clerks, 38.
  clerks and employees in Executive Departments, 38–42.
  disbursing clerks, 24.
  double, 166.
  extra allowances, 169.
  extra services, 40.
  holding two offices, 167.
  messengers, 38.
  officers holding over, 165.
  officers in arrears, 170.
  recess appointees, 163, 164.
  restrictions on, 28, 38–42.
  temporary clerks, 39.
  watchmen, 38.
Sales (see *Proceeds of Sales*, and *Sales of Subsistence*):
  credit, 764, 778, 782–784.
  disposition of proceeds, 611–616.
  medical supplies, 934, 935.
  ordnance, 1177, 1178.
  reports of proceeds, 75.
Sales—Continued.
  smooth-bore cannon, 1187.
  tobacco, 780, 784.
Sales of Subsistence (see *Proceeds of Sales*, and *Sales*):
  cash, 778–781.
  proceeds, 785.
  rates, 781.
School Teachers:
  extra-duty pay, 742, 745.
Schools (see *Post Schools*, and *Service Schools*):
  expenditures, 1627.
  pay of teachers, 742, 745.
Scouts (see *Indian Scouts*), 506.
Seagoing vessels:
  purchases, 729.
Seamen:
  issues of subsistence, 766.
Seal of the United States, 2468.
  custody of, 2469.
Sea Travel, 811, 850, 851.
  on discharge, 850, 851.
Secretary of the Interior (see *Interior Department*):
  duties, 452, 453.
Secretary of the Treasury (see *Treasury Department*):
  Book of Estimates, 61, 62, 64–78.
  claims allowed, reports of, 70, 220.
  delinquent disbursing officers, report, 188.
  estimates, 62–78.
  notification of appointments, 11.
  receipts and expenditures, report, 189.
  rendition of accounts, 187.
  rules for accounting, 207.
  transfers of funds, 296–298.
Secretary of War (see *War Department*):
  abolishment of arsenals, 1194.
  acquisition of lands, etc., for fortifications, 1086, 1087, 1599.
    national military parks, 2382–2384, 2386, 2389, 2397, 2408.
    river and harbor improvements, 1106.
  advances to troops to embark for Philippine Islands, 618, 813.
  allowances of fuel and forage, 740.
  annual reports, 86–92, 129–133.
  Antietam battlefield—
    appointment of superintendent, 2422.
    compensation of superintendent, 2422.
  application of appropriations for rivers and harbors, 1104.
  appropriations for Washington Aqueduct, 1003.
  Arlington National Cemetery, interments in, 2460.
  army retiring board, 1306.
  assignment of judge-advocate to be professor of law, 698.
    retired officer to duty at Soldiers' Home, 1320.
  assistant quartermasters to do duty as commissaries of subsistence, 711.
    surgeons, appointment of board for examination of, 902.
  authority to—
    abolish useless or unnecessary arsenals, 1194.
    alter distribution of clerks, etc., 35.
    amend military record of soldier, 1248.

Secretary of War—Continued.
- authority to—
  - appoint commissioners for national military parks, 2398, 2410.
    - expert accountant, 684.
    - hospital stewards, 915, 917.
    - superintendent to nurse corps, 925.
  - assess vessels at Fort Monroe, 1517.
  - build machine for testing iron, etc., 1207.
  - codify and publish regulations of the Army 489.
  - commute rations, 776.
  - credit States, etc., with the sum charged to them for arms, etc., 1703.
  - deliver condemned cannon to national military parks, etc., 2377, 2405, 2406.
  - designate chief clerk to sign requisitions, etc., 120.
  - detail employee as telegraph operator, 101.
    - employee to administer oath, 128, 1639.
    - officers and enlisted men to establish post school, 1627.
    - privates of hospital corps, 924.
    - quartermaster and commissary of cadets, 1478.
    - troops to protect Yellowstone National Park, 2445, 2447.
  - determine caliber, etc., of guns, 1186.
    - what constitutes duty without troops, 830 842.
  - direct the establishment of military headquarters, 574.
    - transportation of troops, etc., 126.
  - discharge volunteer medical officers, 900.
  - distribute proper quota of arms, etc., to certain States, 1702.
  - employ clerks, etc., 25.
    - skilled draftsmen, etc., in office of Chief of Engineers, 976.
    - veterinarians, 733.
  - enlist privates in hospital corps, etc., 922.
  - establish harbor lines, 1118.
    - school of cavalry, etc., 1519.
  - exchange or sell unserviceable powder and shot, 1177.
  - extend hours of labor, 52, 53.
  - grant certain privileges on military reservations, 1620.
    - leaves of absence, 43, 44.
    - temporary use of Potomac Park, 982.
  - increase pay of nurses serving as chief nurses 927.
  - issue arms to border States, 1780.
    - Executive Departments, 1204.
    - Territories, 1780, 1781.
    - certificates of discharge, 1389.
    - medals of honor, 1357.
    - ordnance, etc., to colleges, 1292, 1296.
    - stores, arms, etc., to militia District of Columbia, 1740.
    - subpœnas to witnesses, 110.
  - lease public property, 1620.
  - loan or give condemned ordnance, etc., 1182.
  - make regulations, etc., 20, 23.
    - requisitions for official stamps, 99.
  - permit deposits of material in navigable waters, 1124.

Secretary of War—Continued.
- authority to—
    - permit enlisted men to make allotments of their pay, 871.
    - temporary occupation or use of public works, 1125.
    - volunteer regiments to retain regimental colors, 542.
  - prescribe kinds and amounts of purchases, 125.
  - purchase breech-loading steel guns, 1189.
  - purchase from Indians, 718, 1554.
  - refer questions of law to Attorney-General, 338.
  - remove charge of desertion, 1242.
  - rent buildings, 94.
  - replace ordnance, etc., used by volunteers, 1203, 1701.
  - require monthly reports, 53.
    - opinion of Attorney-General, 337.
  - select board of ordnance and fortifications, 1209–1211.
    - ordnance sergeants, 1163.
    - post commissary sergeants, 762.
  - sell, for experimental purposes, smoothbore cannon, 1187.
- bidders, report of, 131.
- bond, bidder may be required to furnish, 1535.
- buildings for religious worship on West Point military reservation, 1513.
- bridges, etc., over navigable waters, 1114, 1115, 1117.
- California Débris Commission, 1055, 1073, 1078–1080.
- canals, etc., use of public funds for operation and repair of, 1111.
- captured flags, disposition, 124.
- certificates of service in military telegraph corps, 1257.
- charts, maps, etc., sale of, 140.
- Chickamauga and Chattanooga National Park—
  - authority to grant right of way in, 2378.
  - reduction of area of, etc., 2365.
  - regulations for care, etc., of, 2363.
  - use of land by owners, 2359.
- civilian employees, restriction on employment of, 748.
- clerical force, 21–53.
- clerks at headquarters, 572, 573.
- commutation of rations, 776, 777.
- contingencies of Army, report of expenditures, 130.
- contingent funds, 54–60.
- contracts, American material to be preferred, 1542.
- contracts to be in writing, etc., 1539, 1567.
- contracts and purchases, 1520.
- construction of lines of telegraph subject to approval of, 127.
  - quarters for hospital stewards, 736, 931.
- control and supervision of transportation of troops, etc., 720.

Secretary of War—Continued.
detachments of enlisted men at Military Academy, 1510.
detail of employee to administer oaths, 128.
enlisted men for duty at recruiting stations, 679.
discharge of enlisted men, with travel pay, by, 541.
duties, 117, 122–128.
performance of, in absence, 119, 120.
duty without troops, authority to determine what constitutes, 830, 842.
enlistment of sergeants, corporals, etc., of ordnance, 1164.
estimates, 62–78.
expenditures, report of, 129.
fishways, construction of, in discretion of, 1109.
Gettysburg National Park, improvement of roads, 2387.
specimens of arms, etc., used in battle, 2388.
gratuitous issues of clothing, 750.
horses, purchase of, 730, 1544, 1545.
Indian country, introduction of liquor into, 1977.
inquiry as to disposition of arms, etc., issued to States, etc., 1704.
insane persons, admission of, to Government Hospital for the Insane, 2344.
insane persons, care of, in California State asylums, 2348.
inspection of disbursements, 625.
introduction of liquor to Indian country, 1977–1979.
judge-advocate, assignment of, to be professor of law, 1459.
leasing of lands of national military parks, 2374, 2390, 2403, 2409.
leases of public property, 1620.
leaves of absence to officers, on full pay, 827, 1287.
limit of expenditures on buildings and grounds, 1549, 1624.
medical officers, assignment to duty by, 910.
messengers at headquarters, 572, 573.
military affairs, control of, 122.
militia—
apportionment of appropriation for, 1693.
disposition of unserviceable or unsuitable arms, etc., 1696.
District of Columbia, disposing of unserviceable property, 1745.
issue of arms, etc., to 1740.
subsistence while on duty, 1768.
use of Washington Barracks by, 1755.
issue of arms, etc., to Territories, 1780, 1781.
arms, etc., to Territories and border States, 1780.
ordnance to, for practice, 1705.
Springfield rifles to governors of States for, 1700.
purchase of stores, etc., for, by State, 1697.
purchase or manufacture of arms, etc., for, 1694.
returns of, 133, 1668, 1695.
Mississippi River, appropriation for works on, etc., 1040, 1043.
and tributaries, water gauges on, 1038.

Secretary of War—Continued.
Mississippi River—Continued.
rules, etc., for navigation of south pass, 1041, 1042.
Commission, detail of secretary for, 1035.
Missouri River Commission, detail of secretary for, 1047.
national cemeteries—
acquisition of lands for, 2449, 2451.
appointment of superintendents of, 2452.
authority over, 2448–2457, 2459, 2460.
compensation, etc., of superintendents of, 2454.
delivery of condemned cannon to, 2377, 2405, 2406.
estimates, 2448.
interment of nurses, 2460.
National Home for Disabled Volunteer Soldiers—
board of managers of, 2287.
delivery of obsolete cannon to, 2335.
inspection of, 2295.
national military parks—
acquisition of land, 2382–2384, 2386, 2389, 2397, 2408.
approval of battle lines, etc., 2370, 2385, 2386, 2401.
authority over, 2358, 2397, 2398, 2419–2421.
authority to accept land for, 2375, 2379, 2380.
authority to appoint commissioners for, 2398, 2410.
compensation of commissioners, 2360, 2381, 2398, 2410.
erection of monuments, etc., 2385, 2386, 2391–2395, 2401, 2402.
leasing of lands of, 2374, 2390, 2403, 2409.
supervision of commissioners of, 2360–2361, 2381.
use of, for military maneuvers, 2349–2351.
notice to remove obstructions to navigation, 1132.
office, 117.
payments by express, 803.
performance of duties, 13, 15–18.
private cemeteries, erection of headstones over soldiers in, etc., 2456, 2457.
Potomac Park to be under charge of, 982.
records, custody of, 123.
regulations for—
deposits by soldiers to be made by, 881.
examination of cadet appointees, 1482.
use of canals, 1112, 1113.
removal of obstructions to navigation, 1132, 1133.
reports, 66, 73–78, 86–92, 129–133.
retiring bonds, 1306.
revocable licenses, 1620.
reward for apprehension of deserters, 1409.
river and harbor works, report, 132.
rules for examination of accounts, 634.
rules and regulations—
concerning bids for contracts, 1534.
floating of logs, rafts, etc., 1129.
operation of drawbridges, 1117.
use and navigation of canals, etc., 1112.
sale of damaged or unsuitable military stores, 1641.

Secretary of War—Continued.
  sale of smooth-bore cannon, 1187.
  Soldiers' Home, limit to expenditures, 2285.
  supplies, procurement of, 125, 709, 1516.
  telegraph lines, 127.
  text-books, etc., for artillery school, 1516.
  text-books, etc., for cavalry school at Fort Leavenworth, 1518.
  transportation of—
    remains of deceased civilian employees, 1418.
    remains of deceased officers and soldiers, 1416, 1418.
    stores, etc., 125, 126.
  transportation to persons entitled to artificial limbs, 947.
  travel without troops, 842.
  vacancy in office, 13–17.

Security Companies as Sureties, 594–601.

Senate, Secretary of:
  duties, 11a.

Senators:
  franking privilege, 322–325.

Sentences (see *Articles of War*, and *General Courts-Martial*):
  branding, 1833.
  confinement in penitentiary, 1837.
  death, 1832.
  dismissal, 1834, 1835.
  flogging, 1833.
  general officers, 1831.
  marking, 1833.
  publication, 1835.
  suspension of, 1850.
  suspension of officers, 1836.
  tattooing, 1833.

Servants:
  enlisted men not to be used as, 1413.

Service Schools (see *Post Schools*, and *Schools*):
  army war college, 1514.
  artillery school, 1516, 1517.
  cavalry and light artillery school, 1519.
  engineer school, 1515.
  infantry and cavalry school, 1518.

Services (see *War Service*):
  restriction on employment of, 26–31.
  voluntary, not to be accepted, 29.

Set-off in Adjustment of Claims, 233.

Shiloh National Military Park, 2396–2405.
  acquisition of lands, 2397.
  appropriation, 2404.
  commissioners, appointment, 2398.
    compensation, 2398.
    duties, 2399.
    location of office, 2400, 2401.
  condemned cannon, balls, etc, 2405.
  designation, 2396.
  extent, 2396.
  injuries to monuments, trees, etc., 2402.
  leases, 2403.
  marking lines of battle, 2401.
  offices, location of, 2400, 2401.

Short Payments, 644.

Sick Leaves, 1286. (See *Leaves of Absence.*)
  clerks, etc., 43–45.

Signal Corps (see *Chief Signal Officer*, *Signal Department*, and *Signal Office*):
  appointments, 1221.
  details, 1222, 1223.
  duties, 1227–1230.
  enlisted men, 1218, 1224.
  examinations for promotion, 1221.
  historical note, p. 464.
  increase in time of war, 1225, 1226.
  organization, 1218, 1219; p 1059.
  promotions, 1220, 1221.
  promotion, fourteen years' service, 591.
  property accountability, 1229.
  telegraph lines, 1231–1234.
  volunteer force, 1219.

Signal Department (see *Chief Signal Officer*, and *Signal Corps*):
  maps, sale of, 141.

Signal Office (see *Signal Corps*, and *Signal Department*):
  clerical force, 134, note.

Soldiers (see *Enlisted Men*):
  honorably discharged, recommended for employment, 144.

Soldiers' Letters:
  rates of postage, 317.

Soldiers' Home (see *National Homes*):
  admission and discharge, 2275–2278.
  board of commissioners, 2263.
  deductions for, 889.
  discipline, 2283.
  funds for support of, 2269–2274.
  inspections, 689, 2266.
  officers, 2267, 2268.
  outdoor relief, 2279.
  pensions to inmates, 2280–2282.
  restriction on buildings, 2285.
  restriction on sale of liquor near, 2286.
  uniform of inmates, 2284.

Solicitor-General (see *Attorney-General*), 333.

South Mountain:
  marking lines of battle, 2419.

Southern Pacific Railroad, 2067.

Special Delivery Stamps, 318, 319.

Squadrons:
  cavalry, 1419, 1425.

Staff (see *Staff Departments*):
  chief of, 558, note 1.
  volunteers, 519, 530–534.

Staff Departments (see *Commissioned Officers*):
  appointments, 578.
  details in, 579–582, 1285.
  disbursing officers, 592–661.
  examinations for appointment—
    detail, 580.
    promotion, 579, 583–588.
  promotions in, 579, 591.
  restriction in appointments to, 578.
  transfers to, 589, 590.

Stamps:
  official, 99.

State Department, 12.

State Homes, 2321–2324. (See *National Homes*, and *Soldiers' Home.*)

States:
  claims for war expenses, 223–230.
  distribution of arms to, 1195.

States—Continued.
  issues of ordnance to, 1179.
  records of, as evidence, 1826.
  replacing arms used by, 1203.
  sales of ordnance to, 1180, 1181.
Stationery:
  purchases of, 82.
Statutes at Large, 481–486. (See *Revised Statutes.*)
  distribution, 482.
  evidential value, 483–485.
  presentation of copies, 182, 486.
  publication, 481.
  sale, 482.
Stoppages (see *Pay Department*, and *Pay of Enlisted Men*):
  commissioned officers, 850–856.
  enlisted men, 889–898.
Subsistence (see *Subsistence Department*):
  claims of States for reimbursement, 227.
  militia, 1681, 1682.
  purchases of, 1552.
  retired enlisted men, 1382.
Subsistence Department (see *Staff Departments*):
  articles for sales, designation, 690.
  commutation of rations, 789, 791.
  composition, 758.
  credit sales, 764, 778, 782–784.
  details, 760, 761.
  duties, 763–768.
  emergency purchases, 768.
  examinations for promotion, 759.
  exceptional articles, 765.
  historical note, p. 305.
  issues of rations, 770–777.
  issues to seamen and marines, 766.
  officers not to trade, 767.
  organization, 758; p. 1055.
  post commissary-sergeants, 762.
  proceeds of sales, 612, 613.
  promotions, 759.
  purchases, 763–765, 767, 768.
  quartermasters to perform duty in, 711.
  rations, 769–777.
  sales, 778–784.
  sales to officers and enlisted men, 764, 765.
  stoppages, 895, 896.
  tobacco, sales of, 780, 784.
Substitution Issues, 770.
Summary Court, 1855–1861. (See *Inferior Courts.*)
  disposition of records, 701.
Supplies:
  duties of Secretary of War in procurement of, 125
Sureties (see *Bonds*, and *Disbursing Officers*):
  liability, 604, 605.
  priority of, 247.
  release, 604, 605.
  security companies as, 594–601.
Surety Companies as Sureties, 594–601.
Surgeon-General's Office (see *Medical Department*):
  clerical force, 134.
  library, 940.
Suspension of Intercourse, 2029–2050.
Suspension of Officers, 1836.
Tables of Distances, 840.
Tableware:
  purchases, 714.
Tactical Organizations, 529–534, 570, 571.
Tattooing Prohibited, 1833.
Teachers:
  extra-duty pay, 742, 745.
Teamsters:
  extra-duty pay, 742, 745.
Telegraph (see *Telegraph Lines*):
  line to Capitol, 101, 102.
  supervision of Chief Signal Officer, 1227, 1231.
Telegraph Lines (see *Military Telegraph Lines*):
  control of, by Secretary of War, 127.
Temporary Appointments, 13–19.
Temporary Clerks:
  salaries, 39.
Tender, Legal, in Debts Due the United States, 305, 306.
Term of Enlistment, 1370.
Territorial Homes, 2321–2324.
Territorial Militia, 1777–1781.
Territories:
  issues of arms to, 1780, 1781.
Testing Machine at Watertown Arsenal, 1205–1208.
Text-books for Schools, 1714.
Thanksgiving Day, 46.
Timber (see *Indian Reservations*, *Public Lands*, and *Reservations*):
  floating of, in navigable waters, 1128, 1129.
Titles to Land:
  examination, 334–335, 1593.
Tobacco:
  amount furnished, 780.
  cash sales, 780.
  credit sales, 784.
  rates, 780.
  sales of, 780, 784.
Torpedoes:
  injuries to, penalty, 1090.
Transfers:
  engineer officers, 960.
  enlisted men, 1376, 1377.
  to staff, 589, 590.
Transportation (see *Quartermaster's Department*):
  allowance, 720, note.
  animals, 720, note.
  baggage, 720, note.
  civilians, 720, note.
  claims of States for reimbursement, 226, 229
  contracts to be made for, 728.
  control of Secretary of War, 125, 126.
  deduction from mileage accounts, 723–725.
  executive departments, 727.
  horses, 720, note.
  officers, 721–725.
  persons, 720–725.
  procurement of, 726.
  property, 720, 721–727.
  tables of distances, 724.
  travel without troops, 721.
  troops, 720, 721.
Travel Allowances (see *Travel Allowances of Officers*, and *Travel Pay of Enlisted Men*):
  commissioned officers, 837–849.
  militia, 1679, 1680.
Travel Allowances of Officers:
  actual transportation, 843–845.
  bond-aided roads, 844, 845.

- **Travel Allowances of Officers**—Continued.
  - distances, computation of, 840.
  - duty to be stated in order, 838.
  - expert accountant, 847.
  - mileage, 839, 840, 846, 848, 849.
  - necessity for travel to be stated, 837.
  - paid by paymasters, 848, 849.
  - paymaysters' clerks, 847.
  - rate, 839, 840.
  - route of travel, 837.
  - transportation in kind, 843–845.
  - travel without troops, 842.
- **Travel Expenses,** 720, note.
  - engineer officers, 972.
  - volunteers, 541.
- **Travel Pay of Enlisted Men** (see *Travel Allowances*):
  - allowance, 1391.
  - forfeiture, 1385.
  - sea travel, 1392.
- **Travel Pay on Discharge:**
  - commissioned officers, 1336–1338.
  - enlisted men, 1391, 1392.
- **Travel without Troops,** 721.
- **Treasurer** (see *Secretary of the Treasury,* and *Treasury Department*):
  - appointment, 283.
  - duties, 284.
  - public money subject to draft, 298.
  - reports of accounts outstanding, 304.
- **Treasury** (see *Treasurer,* and *Treasury Department*):
  - balances unexpended, disposition of, 279–282.
  - militia fines, 1689, 1690.
  - receipts from military telegraph lines, 1232, 1233.
  - records of, in evidence, 1819.
  - tender, 305–308.
  - transcripts from books as evidence, 1820, 1821.
- **Treasury Department** (see *Accounting Officers, Accounts, Secretary of the Treasury,* and *Treasurer*):
  - appropriations, 271–275.
  - assistant treasurers, 286.
  - auditors, 194–214.
  - bookkeeping and warrants, division of, 210.
  - claims, 219–244.
  - Comptroller, 190–193.
  - debtors, discharge of, 248, 249.
  - debts due by and to United States, 245–247.
  - depositories, 289, 290.
  - designated depositories, 289, 290.
  - disbursing agents, 291–295a.
  - estimates, 265–267.
  - fiscal agents, 295a.
  - fiscal year, 184.
  - legal tender, 305–308.
  - mints to be depositories, 287, 288.
  - national banks as depositories, 289.
  - outstanding checks, 309–311.
  - prosecution of claims, 235–244.
  - requisitions for funds, 61.
  - sales, proceeds of, 611–616.
  - settlement of accounts, 632–635.
  - States, claims of, for war expenses, 223–230.
  - Treasurer, 283, 284.
- **Treasury of the United States,** 285.
- **Treaties:**
  - power to make, 7.
- **Troops** (see *Army, Enlisted Men,* and *Militia*):
  - payments to, 800–804.
  - transportation, 720, note.
- **Troops of the Line:**
  - artillery corps, 1429–1444.
  - cavalry, 1419–1428.
  - colored regiments, 1420, 1446.
  - engineer troops, 1452.
  - infantry, 1445–1451.
  - maximum strength, 1453.
- **Trusses,** 950–952.
- **Tucker Act** (see *Court of Claims*), 403–417.
- **Uniform:**
  - brevet rank, 1349.
  - highest regular rank, 1352, 1353.
  - highest volunteer rank, 1351.
  - President to prescribe, 749.
  - sale of, forbidden, 754.
  - selling, spoiling, etc., 755.
- **Union** (see *Flag*), 2466, 2467.
- **United States:**
  - laws of, in evidence, 1827.
- **United States Military Telegraph Corps** (see *Military Telegraph Lines*):
  - certificates of service in, 1257.
- **Union Pacific Railroad,** 2065.
- **Unlimited Retired List,** 1300–1302.
- **Unused Appropriations,** 28.
- **Vacancies:**
  - chiefs of bureau, 14.
  - heads of Executive Departments, 13–19.
- **Veterinarians:**
  - artillery, 1435, 1436.
  - cavalry, 1426.
  - Quartermaster's Department, 733.
- **Vice-Admiral:**
  - relative rank, 564.
- **Vicksburg National Military Park,** 2407–2414.
  - acquisition of lands, 2408.
  - commissioners, 2410, 2411.
  - construction of park, 2414.
  - designation, 2407.
  - engineer assistant to commissioners, 2408.
  - establishment, 2407.
  - extent, 2407.
  - injuries to monuments, trees, etc., 2413.
  - office, location of, 2410.
  - State monuments, 2412.
- **Volunteer Army** (see *War Establishment*):
  - composition, 498.
- **Volunteers:**
  - allowances, 527, 528.
  - appointments, 521.
  - apportionment, 517.
  - claims of States for raising, etc., 223–230.
  - colors, 542.
  - disbandment, 535–542.
  - discharge, 535, 552, 553.
  - enlistments, 524, 545, 546.
  - establishment in time of war, 498.
  - examining boards, 522.
  - extra pay on discharge, 536–539.
  - force of, 1899, 543–551.
  - general officers, 547.
  - general staff, 530–534.
  - increase of, 1899, 515, 516.

Volunteers—Continued.
  medical staff, 519.
  muster out, 535–541, 552, 553.
  muster rolls, 526.
  organization, 517, 518, 543–546.
  pay, 527, 528, 878a.
  recruitment; 525.
  reduction, 535–542.
  returns, 526.
  Signal Corps, 534.
  staff officers, 547–551.
  tactical organizations, 529–534.
  term of service, 524.
  travel pay, 541.
Wagons:
  purchases, 729.
War:
  extra-duty pay forbidden in time of, 746.
War Department (see *Secretary of War*):
  absence, leaves of, 43–45.
  absence of chief of bureau, 121.
    Secretary of War, 119, 120.
  administration of oaths, 49–51.
  advertising, 79–81.
  annual reports, 86–92.
  appointment of clerks, 25–31.
  Assistant Secretary of War, 118.
  chief clerk, 21–23, 120, 134.
  claims for losses in war with Spain, 137.
  claims, prosecution of, 110–116.
  classification of clerks, 32–37.
  clerical force, 21–48, 134–136.
  clerks, employees, etc., 21–48, 134–136.
  closing, for death of ex-officer, 98.
  closing of buildings, 98.
  clocks, use of recording, prohibited, 95.
  contingent funds, 54–60.
  contracts and purchases, 79–82.
  deceased employees, transportation of remains, 96.
  details in clerical force, 35, 136.
  disbursing clerk, 24.
  disposition of useless papers, 106, 107.
  draping buildings in mourning, 97.
  estimates, 62–78.
  holidays, 46–48.
  inspection of fuel, 83–85.
  inventories of property, 93.
  labor, hours of, 52, 53.
  leaves of absence, 43–45.
  legal advice, 338.
  oaths, 49–51.
  official register, 92a.
  penalty envelopes, 100, 320–327.
  postage stamps, official, 99.
  purchases, 79–85.
  recording clocks, 95.
  regulations, 20.
  renting of buildings, 93a, 94.
  reports, 73–78, 86–92.
War Department—Continued.
  salaries of clerks, 38–42, 134, 135.
  Secretary of War, 117, 122–128.
  sick leaves, 43–45.
  stationery, purchases of, 82.
  telegraph line to Capitol, 101, 102.
War Department Building, 138, 139.
  closing for death of an officer, 98.
  custody, 138, 139.
  draping in mourning, 97.
  recording clocks prohibited, 95.
War Establishment, 509–511. (See *Army*, and *Volunteer Army.*)
  disbandment, 535–542.
  Regular Army, 509–513.
  Volunteer Army, 517–528.
War Service (see *Retirement of Officers*):
  computation of, for retirement, 1380.
Warrants, 209.
  distress, 251–264.
Washington Aqueduct, 995–1010. (See *Chief of Engineers*):
  contamination of water, 1009.
  decisions of Chief Engineer, 1002.
  diversion of water, 1005.
  expenditure of appropriations, 1003.
  offices, 998.
  pipes, use, injury to, 1007, 1008, 1010.
  records, 999.
  regulation of water supply, 1001.
  reports, 1000.
  supervision of Chief Engineer, 995, 996.
  water, use of, 1004.
Washington Monument (see *Chief of Engineers*):
  care, etc., 990, 991.
  society, 992.
Watchmen, Executive Departments:
  salaries, 38.
Witnesses (see *General Courts-Martial*):
  attachment, 1810.
  fees, 1812–1814.
  refusal of civilian to testify, 1811.
Women:
  employment of, 34.
  salaries, 38.
Wrecks (see *Engineer Department*, and *Navigable Waters of the United States*):
  removal of, 1133.
Wrongful Conversion of Property, 1644.
Yellowstone National Park, 2423–2447.
  control in Secretary of Interior, 2424.
  employees, 2444.
  employment of troops in, 2444, 2447.
  establishment, 2423.
  establishment and jurisdiction, 2423–2436.
  improvements, 2440.
  leases, 2442, 2443.
  protection of birds and animals, 2437–2441.
  troops, detail of, for duty in, 2445, 2447.
  United States commissioner, 2429–2435.

SUPPLEMENT TO THE FOURTH
EDITION OF THE

Military Laws of the United States

SHOWING CHANGES TO MARCH 4, 1907

With Appendices

Prepared under the direction of
The Honorable WILLIAM H. TAFT, Secretary of War
By Major JOHN BIDDLE PORTER, Judge-Advocate
United States Army

[illegible]

[illegible]

Military Laws of the United States

[illegible]

[illegible]

[illegible]

SUPPLEMENT

TO THE

MILITARY LAWS OF THE UNITED STATES.

The chapters and paragraphs of this Supplement have been numbered to conform as closely as possible to the chapters and paragraphs of the Military Laws, containing the same general subject-matter.

New material has required three additional chapters in the Supplement—the first one (Chapter XLVIII) containing the legislation in regard to the General Staff Corps; the second (Chapter XLIX), such legislation by the Philippine government and the tariff laws of the United States as affect the Army, and the third (Chapter L), the recent acts of Congress relating to Alaska which affect the Army.

All paragraphs referred to, unless otherwise stated, are those of the Military Laws of the United States (fourth edition) or of this Supplement.

Appendices A, B and C contain, respectively, The Hague conventions of 1899 relating to " Maritime warfare " and the " Laws and customs of war on land," and the act of Congress incorporating " The American National Red Cross " association.

ERRATA.

MILITARY LAWS OF THE UNITED STATES, 1901.

(Fourth edition.)

Page 35. Paragraph 87 is repealed by section 8 of the act of March 2, 1895 (28 Stats., 808).

Page 111. In citation to paragraph 282, read June 20, "1874," instead of "1784."

Page 185. Insert under line 4 from top of page the words "A Judge-Advocate-General's Department."

Page 194. Insert at end of paragraph 524, after "Sec. 4," "act of April 22, 1898 (30 Stats., 361)," instead of "*ibid;*" and at end of paragraph 525, after "Sec. 7," "act of April 22, 1898, (30 Stats., 362)," instead of "*ibid.*"

Page 195. Insert at end of paragraph 526, after "Sec. 8," "act of April 22, 1898 (30 Stats., 362)," instead of "*ibid;*" and at end of paragraph 527, after "Sec. 12," "act of April 22, 1898 (30 Stats., 363)"; and at end of paragraph 528, same page, read "30 Stats., 420," instead of "30 Stats., 424."

Page 232. In marginal note to paragraph 615, read Chapter "131," instead of Chapter "130."

Page 233. In marginal note to paragraph 618, read v. "30," p. 721, instead of v. "50," p. 721.

Page 240. In date of act cited at end to paragraph 631, read "1885," instead of "1895."

Page 253. Insert in lines 2 and 3 of paragraph 662, instead of the words "during the active service of the present incumbent of the office, and with the rank of brigadier-general thereafter," the words "and when a vacancy shall occur in the office of Adjutant-General on the expiration of service of the present incumbent, by retirement or otherwise, the Adjutant-General shall thereafter have the rank and pay of a brigadier-general."

Page 255. In second citation to paragraph 671, read (30 Stat. L., "978"), instead of (30 Stat. L., "977").

Page 319. At end of paragraph 822, instead of "act of February 24, 1881 (21 Stats. L., 346)," read "act of June 30, 1882 (22 Stats., 118);" and make like change in marginal note thereto.

Page 323. For the number to the paragraph following paragraph 830, which has been omitted, read "831."

Page 325. In act cited at end of paragraph 839, read ("31" Stat. L., 901), instead of ("30" Stat. L., 901).

Page 337. In marginal note to paragraph 867*a*, instead of "v. 19, p. 50," read "v. 29, p. 60;" and in second line of note 2, instead of March "3," 1901, read March "2," 1901.

Page 339. In date of act cited at end of paragraph 871, read March 2, "1899," instead of March 2, "1889."

Page 391. In citation to statute at end of paragraph 1049, and in the marginal note thereof, read March 1, "1893," instead of "1892."

Page 416. In marginal note to paragraph 1112, read sec. 4, August "18," 1894, instead of sec. 4, August "17," 1894.

Page 417. In date of act cited at end of paragraph 1113, read August "18," 1894, instead of August "17," 1894.

Page 420. In date of act cited at end of paragraph 1116, read August "18," 1894, instead of August "17," 1894, and make corresponding change in marginal note thereto.

Page 505. In citations of statute to paragraph 1354, read (21 Stat. L., "604"), instead of (21 Stat. L., "80"); and make corresponding change in marginal note thereto. *See note on this statute, in Supplement to the Revised Statutes, volume 2, page 140.*

Page 538. In paragraph 1440, second line, read "two" first lieutenants, instead of "one" first lieutenant.

Page 543. In subdivision to chapter 31 read "1468. The commandant of cadets," instead of "1468. The same, pay and allowances;" and to the number following, on same page, read "1469. Superintendent and commandant, pay of," instead of "1469. The commandant of cadets."

Page 642. In tenth line from top of foot-note, instead of February 28, "1895," read February 28, "1795."

Page 648. In date of act cited at end of paragraph 1693, read "1887" instead of "1901," and 24 Stats., "402" instead of "401," and make corresponding changes in marginal note thereto.

Page 825. For paragraph 2103, substitute paragraph 2103*a*.

Page 898. In date of act cited at end of paragraph 2294, read "1886" instead of "1896."

Page 917. In subdivision to chapter 44 read—
"2366, 2367, 2368, 2369. Purchases.
2370. State monuments.
2371. Erection of monuments, restriction.
2372. The same, construction.
2373. The same, location.
2374. Leases.
2375. Donation of land for roads.
2376. Donations of cannon, balls, etc.
2377. Injuries to monuments, trees, etc.
2378. Right of way to Chattanooga Rapid Transit Railroad."

Page 928. In last line of paragraph 2383 read "eighteen hundred and ninety-four," instead of "eight hundred and ninety-four."

Page 954. In marginal note to paragraph 2448 read: July "24," instead of July "14."

Page 1130. After "*Extradition: enforcement of*, read "2090–2093," instead of "2080–2083."

Page 1135. After "*Military Storekeepers:*" subsubject "*ordnance*," read "807," instead of "1169–1171."

Page 1136. After "*Militia*," subsubject "*property returns*," read "1695," instead of "1690."

CHAPTER I.

THE EXECUTIVE.

11a. Employees of the Executive Departments and other establishments of the executive branch of the Government may be detailed from time to time to the office of the President of the United States, for such temporary assistance as may be necessary. *Act of February 26, 1907 (34 Stats., 401).*

CHAPTER II.

PROVISIONS APPLICABLE TO THE SEVERAL EXECUTIVE DEPARTMENTS.

APPOINTMENT OF CLERKS; RESTRICTIONS ON APPOINTMENT.

28a. Hereafter it shall be unlawful to detail civil officers, clerks, or other subordinate employees who are authorized or employed under or paid from appropriations made for the military or naval establishments, or any other branch of the public service outside of the District of Columbia, except those officers and employees whose details are now especially provided by law, for duty in any bureau, office, or other division of any Executive Department in the District of Columbia, except temporary details for duty connected with their respective offices. *Sec. 6, Act of June 22, 1906 (34 Stats., 449).*

(This paragraph amplifies paragraph 28.)

28b. It shall not be lawful hereafter for any clerk or other employee in the classified service in any of the Executive Departments to be transferred from one Department to another Department until such clerk or other employee shall have served for a term of three years in the Department from which he desires to be transferred. *Sec. 5, Act of June 22, 1906 (34 Stats., 449).*

31a. The appropriations herein made for the officers, clerks, and persons employed in the public service shall not be available for the compensation of any persons incapacitated otherwise than temporarily for performing such service, and the heads of Departments shall cause this provision to be enforced. *Sec. 3, Act of February 26, 1907 (34 Stats., 993).*

(This paragraph takes the place of paragraph 31.)

CONTINGENT FUNDS.

56a. Section one hundred and ninety-two, Revised Statutes,[1] shall not apply to the subscriptions to newspapers by the military information division for the fiscal years ending June thirtieth, nineteen hundred, June thirtieth, nineteen hundred and one, June thirtieth, nineteen hundred and two, June thirtieth, nineteen hundred and three, and thereafter. *Act of March 2, 1903 (32 Stats., 929).*

(This modifies paragraph 56.)

56b. So much of section one hundred and ninety-two of the Revised Statutes of the United States as requires newspapers purchased for the use of the Executive Departments to be preserved for the permanent files of such Departments be, and the same is hereby, repealed. *Sec. 7, Act of June 22, 1906 (34 Stats., 449).*

(This paragraph amends paragraph 56.)

58a. For contingent expenses of the military information division, General Staff Corps, including the purchase of law books, professional books of reference, professional and technical periodicals and newspapers, and of the military attachés at the United States embassies and legations abroad, and of the branch office of the Military Information Division at Manila, to be expended under the direction of the Secretary of War, ten thousand dollars: *Provided*, That section thirty-six hundred and forty-eight, Revised Statutes,[2] shall not apply to subscriptions for foreign and professional newspapers and periodicals to be paid for from this appropriation. *Act of April 23, 1904 (33 Stats., 260).*

(This provision now appears annually in the appropriation act for the support of the Army. It has the effect of modifying paragraph 617.)

ESTIMATES.

64a. Hereafter the estimates for expenses of the Government, except those for sundry civil expenses, shall be prepared and submitted each year according to the order and arrangement of the appropriation Acts for the year preceding. And any changes in such order and arrangement, and transfers of salaries from one office or bureau to another office or bureau, or the consolidation of offices or bureaus desired by the head of any Executive Department may be submitted by note in the estimates. * * *

---

[1] SEC. 192, R. S. The amount expended in any one year for newspapers, for any Department, except the Department of State, including all the Bureaus and offices connected therewith, shall not exceed one hundred dollars. And all newspapers purchased with the public money for the use of either of the Departments must be reserved as files for such Department.

[2] SEC. 3648, R. S. No advance of public money shall be made in any case whatever. And in all cases of contracts for the performance of any service, or the delivery of articles of any description, for the use of the United States, payment shall not exceed the value of the service rendered, or of the articles delivered previously to such payment. It shall, however, be lawful, under the special direction of the President, to make such advances to the disbursing officers of the Government as may be necessary to the faithful and prompt discharge of their respective duties, and to the fulfillment of the public engagements. The President may also direct such advances as he may deem necessary and proper, to persons in the military and naval service employed on distant stations, where the discharge of the pay and emoluments to which they may be entitled cannot be regularly effected.

Hereafter the heads of the several Executive Departments and all other officers authorized or required to make estimates for the public service shall include in their annual estimates furnished the Secretary of the Treasury for inclusion in the Book of Estimates all estimates of appropriations required for the service of the fiscal year for which they are prepared and submitted, and special or additional estimates for that fiscal year shall only be submitted to carry out laws subsequently enacted, or when deemed imperatively necessary for the public service by the Department in which they shall originate, in which case such special or additional estimate shall be accompanied by a full statement of its imperative necessity and reasons for its omission in the annual estimates. *Sec. 4, Act of June 22, 1906 (34 Stats., 448).*

68a. The Public Printer is authorized hereafter to procure and supply, on the requisition of the head of any Executive Department or other Government establishment, complete manifold blanks, books, and forms, required in duplicating processes; also complete patented devices with which to file money-order statements, or other uniform official papers, and to charge such supplies to the allotment for printing and binding of the Department or Government establishment requiring the same. *Act of June 28, 1902 (32 Stats., 481).*

68b. Hereafter no book or document not having to do with the ordinary business transactions of the Executive Departments shall be printed on the requisition of any Executive Department or unless the same shall have been expressly authorized by Congress. *Act of March 3, 1905 (33 Stats., 1249).*

68c. Hereafter, in the printing and binding of documents or reports emanating from the Executive Departments, bureaus, and independent offices of the Government, the cost of which is now charged to the allotment for printing and binding for Congress, or to appropriations or allotments of appropriations other than those made to the Executive Departments, bureaus, or independent offices of the Government, the cost of illustrations, composition, stereotyping, and other work involved in the actual preparation for printing, apart from the creation of manuscript, shall be charged to the appropriation or allotment of appropriation for the printing and binding of the Department, bureau, or independent office of the Government in which such documents or reports originate; the balance of cost shall be charged to the allotment for printing and binding for Congress, and to the appropriation or allotment of appropriation of the Executive Department, bureau, or independent office of the Government, in proportion to the number delivered to each; the cost of any copies of such documents or reports distributed otherwise than through Congress, or the Executive Departments, bureaus, and independent offices of the Government, if such there be, shall be charged as heretofore: *Provided*, That on or before the first day of December in each fiscal year each Executive Department, bureau, or independent office of the Government to which an appropriation or allotment of appropriation for printing and binding is made, shall obtain from the Public Printer an estimate of the probable cost of all publications of such Department, bureau, or independent office now required by law to be printed, and so much thereof as would, under the terms of this resolution, be charged to the appropriation or allotment of appropriation of the Department, bureau, or independent office of the Government in which such publications originate, shall thereupon be set aside to be applied only to the printing and binding of such documents and reports, and shall not be available for any other purpose until all of such allotment of cost on account of such documents and reports shall have been fully paid. *Joint Res. of March 30, 1906 (34 Stats., 825).*

68d. The number of copies of any public document or report now authorized to be printed or which may hereafter be authorized to be printed for any of the Executive Departments, or bureaus or branches thereof, or independent offices of the Government may be supplied in two or more editions, instead of one, upon a requisition on the Public Printer by the official head of such Department or independent office, but in no case shall the aggregate of said editions exceed the number of copies now authorized, or which may hereafter be authorized. *Joint Res. of March 30, 1906 (34 Stats., 826).*

68e. Hereafter there shall be submitted in the regular annual estimates to Congress under and as a part of the expenses for "Printing and binding," estimates for all printing and binding required by each of the Executive Departments, their bureaus and offices, and other Government establishments at Washington, District of Columbia, for each fiscal year; and after the fiscal year nineteen hundred and seven no appropriations other than those made specifically and solely for printing and binding shall be used for such purposes in any Executive Department or other Government establishment in the District of Columbia: *Provided*, That nothing in this section shall apply to stamped envelopes, or envelopes and articles of stationery other than letter heads and note heads, printed in the course of manufacture. *Sec. 2, Act of June 30, 1906 (34 Stats., 762).*

68f. Hereafter no part of the appropriations made for printing and binding shall be used for any illustration, engraving, or photograph in any document or report ordered printed by Congress unless the order to print expressly authorizes the same, nor in any document or report of any executive department or other Government establishment until the head of the executive department or Government establishment shall certify in a letter transmitting such report that the illustration is necessary and relates entirely to the transaction of public business. *Sec. 1, Act of March 3, 1905 (33 Stats., 1213).*

75a. Hereafter the Secretary of the Treasury shall require, and it shall be the duty of the head of each Executive Department or other Government establishment to furnish him, within thirty days after the close of each fiscal year, a statement of all money arising from proceeds of public property of any kind or from any source other than the postal service, received by said head of Department or other Government establishment during the previous fiscal year for or on account of the public service, or in any other manner in the discharge of his official duties other than as salary or compensation, which was not paid into the General Treasury of the United States, together with a detailed account of all payments, if any, made from such funds during such year. All such statements, together with a similar statement applying to the Treasury Department, shall be transmitted by the Secretary of the Treasury to Congress at the beginning of each regular session. *Sec. 5, Act of June 30, 1906 (34 Stats., 763).*

MISCELLANEOUS REQUIREMENTS.

100a. No part of any money appropriated by this Act shall be used for purchase, maintaining, driving, or operating any carriage or other vehicle, other than those authorized for personal purposes in section two of the legislative, executive, and judicial appropriation Act for the fiscal year nineteen hundred and five, unless the same shall have conspicuously painted thereon at all times the full name of the Executive Department or other branch of the public service to which the same belong and in the service of which the same are used. *Sec. 3, Act of April 28, 1904 (33 Stats., 513).*

100b. No part of any money appropriated by this or any other Act shall be used for purchasing, maintaining, driving, or operating any carriage or vehicle (other than those for the use of the President of the United States, the heads of the Executive Departments, and the Secretary to the President, and other than those used for transportation of property belonging to or in the custody of the United States), for the personal or official use of any officer or employee of any of the Executive Departments or other Government establishments at Washington, District of Columbia, unless the same shall be specifically authorized by law or provided for in terms by appropriation of money, and all such carriages and vehicles so procured and used for official purposes shall have conspicuously painted thereon at all times the full name of the Executive Department or other branch of the public service to which the same belong and in the service of which the same are used. *Sec. 4, Act of February 3, 1905 (33 Stats., 687).*

(This paragraph takes the place of paragraph 100a.)

CHAPTER III.

THE DEPARTMENT OF WAR.

DUTIES OF THE SECRETARY OF WAR.

126a. No steamship in the transport service of the United States shall be sold or disposed of without the consent of Congress having been first had or obtained. *Act of March 2, 1903 (32 Stats., 938).*

126b. No action looking to the discontinuance of the transport service shall be taken without further action of Congress. *Act of March 2, 1903 (32 Stats., 939).*

126c. On and after July first, nineteen hundred and six, no merchandise except supplies for the Army or Navy shall be transported by sea, under penalty of forfeiture thereof, between ports of the United States and ports or places in the Philippine Archipelago, directly or via a foreign port, or for any part of the voyage, in any other vessel than a vessel of the United States. But this section shall not be construed to prohibit the sailing of any foreign vessel between any port of the United States and any port or place in the Philippine Archipelago: *Provided*, That no merchandise other than that imported in such vessel from some foreign port which has been specified on the manifest as for another port, and which shall not have been unloaded, shall be carried between a port of the United States and a port or place in the Philippine Archipelago. *Sec. 1, Act of April 15, 1904 (33 Stats., 181).*

126d. Vessels of the United States, or belonging to the United States, and no others, shall be employed in the transportation by sea of coal, provisions, fodder, or supplies of any description, purchased pursuant to law, for the use of the Army or Navy unless the President shall find that the rates of freight charges by said vessels are excessive and unreasonable, in which case contracts shall be made under the law as it now exists: *Provided*, That no greater charges be made by such vessels for transportation of articles for the use of the said Army and Navy than are made by such vessels for transportation of like goods for private parties or companies. *Act of April 28, 1904 (33 Stats., 518).*

126e. On and after April eleventh, nineteen hundred and nine, no merchandise except supplies for the Army or Navy shall be transported by sea, under penalty of forfeiture thereof, between ports of the United States and ports or places in the Philippine Archipelago, directly or via a foreign port, or for any part of the voyage, in any other vessel than a vessel of the United States. But this section shall not be construed to prohibit the sailing of any foreign vessel between any port of the United States and any port or place in the Philippine Archipelago: *Provided*, That no merchandise other than that imported in such vessel from some foreign port which has been specified on the manifest as for another port, and which shall have not been unloaded, shall be carried between a port of the United States and a port or place in the Philippine Archipelago. *Sec. 1, Act of April 30, 1906 (34 Stats., 154).*

(This paragraph takes the place of paragraph 126c.)

126f. On and after April eleventh, nineteen hundred and nine, no foreign vessel shall transport passengers between ports of the United States and ports or places in the Philippine Archipelago, either directly or by way of a foreign port, under a penalty of two hundred dollars for each passenger so transported and landed. *Sec. 2, Act of April 30, 1906 (34 Stats., 154).*

126g. Sections one and two of this Act shall not apply to the transportation of merchandise or passengers between ports or places in the Philippine Archipelago. Until Congress shall have authorized the registry as vessels of the United States of vessels owned in the Philippine Archipelago the government of the Philippine Islands is hereby authorized to adopt, from time to time, and enforce regulations governing the transportation of merchandise and passengers between ports or places in the Philippine Archipelago. *Sec. 3, Act of April 30, 1906 (34 Stats., 154).*

126h. Sections one and two of this Act shall not apply to the voyage of a vessel between a port of the United States and a port or place in the Philippine Archipelago begun before April eleventh, nineteen hundred and nine. *Sec. 4, Act of April 30, 1906 (34 Stats., 154).*

126i. Sections one and two of this Act shall not apply to vessels owned by the United States. *Sec. 5, Act of April 30, 1906 (34 Stats., 154).*

126j. On and after the passage of this Act the same tonnage taxes shall be levied, collected, and paid upon all foreign vessels coming into the United States from the Philippine Archipelago which are required by law to be levied, collected, and paid upon vessels coming into the United States from foreign countries: *Provided, however*, That until April eleventh, nineteen hundred and nine, the provisions of law restricting to vessels of the United States the transportation of passengers and merchandise directly or indirectly from one port of the United States to another port of the United States shall not be applicable to foreign vessels engaging in trade between the Philippine Archipelago and the United States: *And provided further*, That the Philippine Commission shall be authorized and empowered to issue licenses to engage in lighterage or other exclusively harbor business to vessels or other craft actually engaged in such business at the date of the passage of this Act, and to vessels or other craft built in the Philippine Islands or in the United States and owned by citizens of the United States or by inhabitants of the Philippine Islands. *Sec. 6, Act of April 30, 1906 (34 Stats., 154).*

126k. The Secretary of Commerce and Labor shall, from time to time, issue regulations for the enforcement of this Act, except as otherwise provided in section three: *Provided*, That such of the navigation laws of the United States as are in force in the Philippine Archipelago in regard to vessels arriving in the Philippine Islands from the mainland territory and other insular possessions of the United States shall continue to be administered by the proper officials of the government of the Philippine Islands. *Sec. 7, Act of April 30, 1906 (34 Stats., 155).*

CONGRESS OF NATIONS.

141a. The sum of three thousand dollars a year is hereby appropriated, out of any money in the Treasury not otherwise appropriated, for the support and maintenance of the permanent international commission of the congresses of navigation and for the payment of the actual expenses of the properly accredited national delegates of the United States to the meetings of the congresses and of the commission; and that the Secretary of War be, and is hereby, authorized to draw his warrant each year upon the Secretary of the Treasury for such sum, not to exceed three thousand dollars, as may in his opinion be proper to apply to the purposes above mentioned, and that the said sum shall be disbursed under such regulations as may be prescribed by the Secretary of War.

The national delegates aforesaid from the United States shall serve without compensation, but shall be reimbursed for their actual expenses incurred while traveling to and from the meetings, and while in attendance thereon, from the funds herein appropriated and authorized to be expended. *Act of June 28, 1902 (32 Stats., 485).*

BUREAU OF INSULAR AFFAIRS.

141b. The Division of Insular Affairs of the War Department, organized by the Secretary of War, is hereby continued until otherwise provided, and shall hereafter be known as the Bureau of Insular Affairs of the War Department. The business assigned to said Bureau shall embrace all matters pertaining to civil government in the island possessions of the United States subject to the jurisdiction of the War Department; and the Secretary of War is hereby authorized to detail an officer of the Army whom he may consider especially well qualified, to act under the authority of the Secretary of War as the chief of said Bureau; and said officer while acting under said detail shall have the rank, pay, and allowances of a colonel. *Sec. 87, Act of July 1, 1902 (32 Stats., 712).*

141c. The Chief of the Bureau of Insular Affairs of the War Department shall hereafter be appointed by the President for the period of four years, unless sooner relieved, with the advice and consent of the Senate, and while holding that office he shall have the rank, pay, and allowances of a brigadier-general. *Act of June 25, 1906 (34 Stats., 456).*

(This paragraph amends paragraph 141b.)

141d. The Secretary of War is hereby authorized to detail an officer of the Army, whom he may consider especially well qualified, to act as principal assistant to the Chief of the Bureau of Insular Affairs of the War Department, and said principal assistant while acting under said detail shall have the rank, pay, and allowances of a major. *Act of March 2, 1907 (34 Stats., 1162).*

141e. The provisions of section twenty-seven of the Act of February second, nineteen hundred and one, with reference to the transfer of officers of the line to the departments of the staff for tours of service, shall apply to the vacancy created by this Act and to the return of the officer so detailed to the line of the Army. *Act of March 2, 1907 (34 Stats., 1162).*

(See paragraph 582.)

APPROPRIATIONS.

272a. No Executive Department or other Government establishment of the United States shall expend, in any one fiscal year, any sum in excess of appropriations made by Congress for that fiscal year, or involve the Government in any contract or other obligation for the future payment of money in excess of such appropriations unless such contract or obligation is authorized by law. Nor shall any Department or any officer of the Government accept voluntary service for the Government or employ personal service in excess of that authorized by law, except in cases of sudden emergency involving the loss of human life or the destruction of property. All appropriations made for contingent expenses or other general purposes, except appropriations made in fulfillment of contract obligations expressly authorized by law, or for objects required or authorized by law without reference to the amounts annually appropriated therefor, shall, on or before the beginning of each fiscal year, be so apportioned by monthly or other allotments as to prevent expenditures in one portion of the year which may necessitate deficiency or additional appropriations to complete the service of the fiscal year for which said appropriations are made; and all such apportionments shall be adhered to and shall not be waived or modified except upon the happening of some extraordinary emergency or unusual circumstance which could not be anticipated at the time of making such apportionment, but this provision shall not apply to the contingent appropriations of the Senate or House of Representatives; and in case said apportionments are waived or modified as herein provided, the same shall be waived or modified in writing by the head of such Executive Department or other Government establishment having control of the expenditure, and the reasons therefor shall be fully set forth in each particular case and communicated to Congress in connection with estimates for any additional appropriations required on account thereof. Any person violating any provision of this section shall be summarily removed from office and may also be punished by a fine of not less than one hundred dollars or by imprisonment for not less than one month. *Act of February 27, 1906 (34 Stats., 48).*

(This paragraph amends Section 3679 of the Revised Statutes, as amended by section 4 of the deficiency appropriation act of March 3, 1905, 33 Stats., 1257.)

272b. No Act of Congress hereafter passed shall be construed to make an appropriation out of the Treasury of the United States, or to authorize the execution of a contract involving the payment of money in excess of appropriations made by law, unless such Act shall in specific terms declare an appropriation to be made or that a contract may be executed. *Sec. 9, Act of June 30, 1906 (34 Stats., 764).*

(See paragraphs 272a, 659, and 1623.)

APPLICATION OF BALANCES.

279a. Hereafter the appropriations "Ordnance-stores ammunition," "Small-arms target practice," and "Ordnance stores and supplies" shall be available for two years to procure the stores authorized by them. *Act of March 2, 1907 (34 Stats., 1175).*

(See paragraph 282.)

CHAPTER V.

THE DEPARTMENT OF THE TREASURY—THE ACCOUNTING OFFICERS.

DESIGNATED DEPOSITORIES.

290a. The treasury of the Philippine Islands and such banking associations in said islands with a paid up capital of not less than two million dollars and chartered by the United States or any State thereof as may be designated by the Secretary of War and the Secretary of the Treasury of the United States shall be depositories of public money of the United States, subject to the provisions of existing law governing such depositories in the United States: *Provided*, That the treasury of the government of said islands shall not be required to deposit bonds in the Treasury of the United States, or to give other specific securities for the safe-keeping of public money except as prescribed, in his discretion, by the Secretary of War. *Sec. 85, Act of July 1, 1902 (32 Stats., 711).*

CHAPTER VII.

THE DEPARTMENT OF JUSTICE—HABEAS CORPUS—THE COURT OF CLAIMS.

HABEAS CORPUS.

361a. The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion, insurrection, or invasion the public safety may require it, in either of which events the same may be suspended by the President, or by the governor, with the approval of the Philippine Commission, wherever during such period the necessity for such suspension shall exist. *Sec. 5, Act of July 1, 1920 (32 Stats., 692).*

(This paragraph applies to the Philippine Islands, being a part of the "Act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes.")

CHAPTER XI.

THE MILITARY ESTABLISHMENT—GENERAL PROVISIONS OF ORGANIZATION.

NATIVE TROOPS—TROOPS IN THE PHILIPPINE ISLANDS.

501a. Any companies of Philippine scouts ordered to assist the Philippine constabulary in the maintenance of order in the Philippine Islands may be placed under the command of officers serving as chief or assistant chiefs of the Philippine constabulary, as herein provided: *Provided*, That when the Philippine scouts shall be ordered to assist the Philippine constabulary, said scouts shall not at any time be placed under the command of inspectors or other officers of the constabulary below the grade of assistant chief of constabulary. *Sec. 2, Act of January 30, 1903 (32 Stats., 783).*

THE PORTO RICAN REGIMENT.

505a. Citizens of Porto Rico shall be eligible for enlistment in the Regular Army and the Porto Rico Regiment may be ordered for service outside of the island of Porto Rico. *Act of March 2, 1903 (32 Stats., 934).*

(This amplifies paragraphs 671 and 1366 in regard to enlistments.)

505b. For Porto Rico Provisional Regiment of Infantry, composed of two battalions of four companies each, to include the enlisted men of the present regiment who may be in the service June thirtieth, nineteen hundred and four, and officers as herein provided. The field officers shall be detailed from the officers of the Regular Army of the same grade and shall receive the pay and emoluments of their grade. The present officers of the regiment below the grade of field officers who are mentally, morally, and physically qualified and have proved efficient in their respective positions may be reappointed by the President, by and with the advice and consent of the Senate (and such officers shall be entitled to preference in such appointments) for a provisional term of four years. Officers so reappointed shall be eligible for promotion in the regiment up to and including the rank of captain, upon examination as to their fitness for such promotion. Vacancies then existing or thereafter occurring in the grade of second lieutenant may be filled by the President, in his discretion, by and with the advice and consent of the Senate, by the appointment of citizens of Porto Rico for the provisional term of four years, whose qualifications for commissions shall be established by such examination as the President may prescribe, who shall also be eligible for promotion in the regiment up to and including the rank of captain, upon an examination as to their fitness. Vacancies not filled as hereinbefore provided by the reappointment or promotion of the present officers or by the appointment or promotion of citizens of Porto Rico, shall be filled by detail from the line of the infantry of the Army of the same grade with the vacancy to be filled. Men hereafter enlisted in the regiment shall be citizens of Porto Rico and shall be enlisted for a term of two years; and except in the case of noncommissioned officers shall not be reenlisted in time of peace. The names of all enlisted men who have served honorably in the regiment shall be kept at the headquarters of the regiment, and these men shall be regarded as a reserve, to be specially considered in time of war. The pay and allowances of officers and enlisted men of the regiment shall be the same as authorized for like grades in the Regular Army. *Act of April 23, 1904 (33 Stats., 266).*

(This paragraph alters the provision of paragraph 505.)

THE VOLUNTEER ARMY.

518a. All the volunteer forces of the United States called for by authority of Congress shall, except as hereinbefore provided, be organized in the manner provided by the Act entitled "An Act to provide for temporarily increasing the military establishment of the United States in time of war, and for other purposes," approved April twenty-second, eighteen hundred and ninety-eight. *Sec. 24, Act of January 21, 1903 (32 Stats., 780).*

(This paragraph has reference to the "Act to promote the efficiency of the militia, and for other purposes." The provisions of this Act are incorporated, in this supplement, in the chapter entitled "Militia," excepting section 23 of the Act which belongs more properly to the "Volunteer Army" and which will be found in this supplement as paragraph 522a.)

522a. For the purpose of securing a list of persons specially qualified to hold commissions in any volunteer force which may hereafter be called for and organized under the authority of Congress, other than a force composed of organized militia, the Secretary of War is authorized from time to time to convene boards of officers at suitable and convenient army posts in different parts of the United States, who shall examine as to their qualifications for the command of troops or for the performance of staff duties all applicants who shall have served in the Regular Army of the United States, in any of the volunteer forces of the United States, or in the organized militia of any State or Territory or District of Columbia, or who, being a citizen of the United States, shall have attended or pursued a regular course of instruction in any military school or college of the United States Army, or shall have graduated from any educational institution to which an officer of the Army or Navy has been detailed as superintendent or professor pursuant to law after having creditably pursued the course of military instruction therein provided. Such examinations shall be under rules and regulations prescribed by the Secretary of War, and shall be especially directed to ascertain the practical capacity of the applicant. The record of previous service of the applicant shall be considered as a part of the examination. Upon the conclusion of each examination the board shall certify to the War Department its judgment as to the fitness of the applicant, stating the office, if any, which it deems him qualified to fill, and, upon approval by the President, the names of the persons certified to be qualified shall be inscribed in a register to be kept in the War Department for that purpose. The persons so certified and registered shall, subject to a physical examination at the time, constitute an eligible class for commissions pursuant to such certificates in any volunteer force hereafter called for and organized under the authority of Congress, other than a force composed of organized militia, and the President may authorize persons from this class, to attend and pursue a regular course of study at any military school or college of the United States other than the Military Academy at West Point and to receive from the annual appropriation for the support of the Army the same allowances and commutations as provided in this Act for officers of the organized militia: *Provided*, That no person shall be entitled to receive a commission as a second lieutenant after he shall have passed the age of thirty; as first lieutenant after he shall have passed the age of thirty-five; as captain after he shall have passed the age of forty; as major after he shall have passed the age of forty-five; as lieutenant-colonel after he shall have passed the age of fifty, or as colonel after he shall have passed the age of fifty-five: *And provided further*, That such appointments shall be distributed proportionately as near as may be, among the various States contributing such volunteer force: *And provided*, That the appointments in this section provided for shall not be deemed to include appointments to any office in any company, troop, battery, battalion, or regiment of the organized militia which volunteers as a body or the officers of which are appointed by the governor of a State or Territory. *Sec. 23, Act of January 21, 1903 (32 Stats., 779).*

CHAPTER XII.

General Officers, Aids, and Military Secretaries.

555a. When the office of Lieutenant-General shall become vacant it shall not thereafter be filed, but said office shall cease and determine: *Provided further*, That nothing in this provision shall affect the retired list. *Act of March 2, 1907 (34 Stats., 1160).*

(This paragraph amends paragraph 555. See paragraph 558.)

CHAPTER XIII.

Rank and command—Tactical and Territorial Organizations.

CLERKS AND MESSENGERS.

572a. Pay to clerks and messengers at headquarters of division and departments and office of the Chief of Staff.

One chief clerk, at the office of the Chief of Staff, two thousand dollars per annum.

Four clerks, at one thousand eight hundred dollars each per annum.

Ten clerks, at one thousand six hundred dollars each per annum.

Twenty-five clerks, at one thousand four hundred dollars each per annum.

Sixty-five clerks, at one thousand two hundred dollars each per annum.

Eighty-six clerks, at one thousand dollars each per annum.

Sixty-eight general-service messengers, at seven hundred and twenty dollars each per annum.

In all, two hundred and seventy-three thousand one hundred and sixty dollars. *Act of April 23, 1904 (33 Stats., 261).*

(This paragraph amends paragraph 572 by providing for the clerks needed under the new organization for the General Staff and for military divisions.)

573a. It shall not hereafter be lawful to detail clerks or other civilian employees authorized for the Office of the General Staff for duty, temporary or otherwise, in any office or bureau of the War Department at Washington, District of Columbia, or to detail clerks or other employees from the War Department for service in the Office of the General Staff. *Act of June 22, 1906 (34 Stats., 418).*

573b. No clerk, messenger, or laborer at headquarters of divisions, departments, or office of the Chief of Staff, shall be assigned to duty with any bureau in the War Department. *Act of March 2, 1907 (34 Stats., 1161).*

CHAPTER XIV.

THE STAFF DEPARTMENTS—GENERAL PROVISIONS—DISBURSING OFFICERS.

APPOINTMENTS AND DETAILS.

577a. No officer hereafter detailed or appointed under the provisions of section twenty-six of the Act of February second, nineteen hundred and one, who has less than four years to serve from the date of his detail or appointment to the date of his retirement shall serve under such detail or appointment or be paid as if on the active list beyond the date of his retirement. *Act of June 30, 1902 (32 Stats., 509).*

SETTLEMENT OF ACCOUNTS ARISING DURING THE SPANISH-AMERICAN WAR.

605a. The proper accounting officers of the Treasury are hereby, directed, in the settlement of the accounts of disbursing officers of the War Department, arising between the twenty-first day of April, eighteen hundred and ninety-eight, from which date war with Spain is declared to have existed, and the eighth day of July, nineteen hundred and one, inclusive, the date on which the last organization of the

Volunteer Army was mustered out of the service of the United States, to allow such credits for payments and for losses of funds, vouchers, and property as may be recommended under authority of the Secretary of War by the heads of the military bureaus to which such accounts respectively pertain. *Sec. 1, Act of March 3, 1903 (32 Stats., 955).*

605b. The accounts of military officers, whether of the line or staff, for Government property charged to them, shall be closed by the proper accounting officers whenever, in the judgment of the Secretary of War, it will be for the interest of the United States to do so: *Provided*, That such accounts originated subsequent to April twenty-first, eighteen hundred and ninety-eight, and prior to the ninth day of July, nineteen hundred and one: *Provided further*, That no settlement shall be made by the officers of the Treasury, under this act, of the accounts of any officer whose combined responsibility for public money and Government property shall exceed the sum of five thousand dollars, and only of such officers of the Army in whose accounts there is no apparent fraud against the United States: *And provided further*, That this act shall remain in force for two years from and after its passage, and no longer. *Sec. 2, Act of March 3, 1903 (32 Stats., 956).*

DEPOSIT AND SAFE-KEEPING OF THE PUBLIC MONEY.

607a. All funds received as the value of military stores transferred by the several staff departments of the Army to the Insular Department of the Philippines shall be deposited in the Treasury of the United States and remain available during the fiscal year nineteen hundred and five for the procurement of like military stores to replace those so transferred. *Act of April 23, 1904 (33 Stats., 275).*

LOST CHECKS—DUPLICATE CHECKS.

631a. Whenever any original disbursing officer's check is lost, stolen, or destroyed, the Secretary of the Treasury may authorize the officer issuing the same, after the expiration of six months and within three years from the date of such disbursing officer's check, to issue a duplicate thereof upon the execution of such bond to indemnify the United States as the Secretary of the Treasury may prescribe: *Provided*, That when such original disbursing officer's check does not exceed in amount the sum of fifty dollars the Secretary of the Treasury may authorize the issuance of a duplicate at any time after the expiration of thirty days and within three years from the date of such disbursing officer's check. *Act of June 19, 1906 (34 Stats., 301).*

(This paragraph amends section 3646 of the Revised Statutes, as amended by the act of March 23, 1906, and takes the place of paragraph 631.)

FORMS OF KEEPING AND RENDERING ACCOUNTS.

635a. Hereafter, in all payments to be made under the provisions of army appropriation acts, when the rate of compensation is annual, payment shall be made monthly at the rate of one-twelfth of the annual rate, and of such monthly rate and of all other monthly rates of compensation one-thirtieth shall be the daily rate for computation of pay for fractional parts of a month; and for the purposes of this Act each and every month shall be held to consist of thirty days, whether the actual number of days be greater or less. *Act of March 2, 1903 (32 Stats., 934).*

(See Circular 33, War Department, 1904.)

635b. The annual compensation of officers, agents, and employees of the United States for services rendered subsequent to June thirtieth, nineteen hundred and four, shall be divided into twelve equal installments, one of which shall be the pay for each calendar month; and in making payments for a fractional part of a month, one-thirtieth of one of such installments, or of a monthly compensation, shall be the rate to be paid for each day. For the purpose of computing such compensation each and every month shall be held to consist of thirty days, without regard to the actual number of days in any month, thus excluding the thirty-first day of any month from the computation, and treating February as if it actually had thirty days. *Sec. 4, Act of April 28, 1904 (33 Stats., 513).*

(See Circular 33, War Department, 1904.)

635c. Hereafter, where the compensation of any person in the military service of the United States is annual or monthly the following rules for division of time and computation of pay for services rendered are hereby established: Annual compensation shall be divided into twelve equal installments, one of which shall be the pay for each calendar month; and in making payments for a fractional part of a month one-thirtieth of one of such installments, or of a monthly compensation, shall be the daily rate of pay. For the purpose of computing such compensation and for computing time for services rendered during a fractional part of a month in connection with annual or monthly compensation, each and every month shall be held to consist of thirty days, without regard to the actual number of days in any calendar month, thus excluding the thirty-first of any calendar month from the computation and treating February as if it actually had thirty days. Any person entering the service of the United States during a thirty-one day month and serving until the end thereof shall be entitled to pay for that month from the date of entry to the thirtieth day of said month, both days inclusive; and any person entering said service during the month of February and serving until the end thereof shall be entitled to one month's pay, less as many thirtieths thereof as there were days elapsed prior to date of entry: *Provided*, That for one day's unauthorized absence on the thirty-first day of any calendar month one day's pay shall be forfeited. *Act of June 12, 1906* (*34 Stats., 248*).

(This paragraph takes the place of paragraphs 635a, 635b, and 1192a, and amends paragraph 1192. See paragraph 802. The act of June 30, 1906 (34 Stats., 763), contains a similar provision to the above, substituting for the words "any person in the military service of the United States," the words "any person in the service of the United States.")

CHAPTER XV.

THE ADJUTANT-GENERAL'S DEPARTMENT.

663a. The officers of the Adjutant-General's Department, except the Adjutant-General, and the officers of the Record and Pension Office shall hereafter constitute one department of the Army, to be known as the Military Secretary's Department; and the Adjutant-General's Office and the Record and Pension Office, heretofore constituting bureaus of the War Department, shall hereafter constitute a consolidated bureau to be known as the Military Secretary's Office of the War Department. The officers so consolidated shall be borne on one list in the order of rank held by them, and those of them who hold permanent appointments as officers of the Adjutant-General's Department or of the Record and Pension Office shall be entitled to promotion below the grade of brigadier-general, as now provided by law and in the order of their standing on said list. Except as otherwise provided herein, the laws now in force shall continue to govern the appointment, promotion, and detail of all officers of the consolidated department hereby created: *Provided*, That the officers of the said consolidated department shall be subject to the supervision of the Chief of Staff in all matters pertaining to the command, discipline, or administration of the existing military establishment: *Provided further*, That no appointments or details to the grade of assistant adjutant-general with the rank of major shall be made until the number of officers of that grade shall be reduced to less than ten, and thereafter the number of officers of said grade in the consolidated department shall be ten: *Provided further*, That of the officers consolidated as hereinbefore provided the senior in rank, who shall be chief of the consolidated department and the title of whose office is hereby changed to that of the military secretary, shall hereafter have the rank of major-general, and the second senior of said officers shall hereafter have the rank of brigadier-general: *Provided further*, That when the office of Military Secretary with the rank of major-general shall hereafter become vacant, it shall not be filled with said rank, and thereafter the chief of the Military Secretary's Department shall have the rank of a brigadier-general with the title of The Military Secretary, and there shall be only one officer above the rank of colonel in the said department. Except as hereinafter provided, the remaining offices of the consolidated department shall retain the titles that they now bear: *Provided further*, That when the office of Adjutant-General shall become vacant the vacancy so created on the active list of the Army shall not be filled, and thereafter the several officers now designated by the title assistant adjutant-general and by the title assistant chief of the Record and Pension Office shall be designated by the title Military Secretary. *Act of April 23, 1904* (*33 Stats., 262*).

(This paragraph merges the Adjutant-General's Department with the Record and Pension Office; the Military Secretary's Department assuming the duties heretofore appertaining to both. The laws applicable to the Adjutant-General's Department and to the Record and Pension Office are now applicable to the Military Secretary's Department, except where otherwise provided. See Chapter XXV, Military Laws of the United States, "The Record and Pension Office.")

663b. Nothing in this Act shall be so construed as to deprive any officer of his commission or to increase the total number of officers of the Army, except as herein specially provided, and all laws or parts of laws inconsistent with the provisions of this Act are hereby repealed. *Act of April 23, 1904* (*33 Stats., 276*).

663c. Whenever the office of the Adjutant-General and the Record and Pension Office shall be consolidated by operation of law, any appropriation available at the time of such consolidation, or that may thereafter become available, for the support of either of those offices shall be equally available for the support of the bureau formed by the consolidation, and all employees provided by law for either of said offices, except such employees as were transferred by the Secretary of War to the Military Information Division of the General Staff prior to April first, nineteen hundred and four, shall be regarded as employees of the consolidated bureau and shall be exclusively engaged upon the work of that bureau as required in the case of the employees of the Record and Pension Office by the Acts making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal years nineteen hundred and four and nineteen hundred and five. *Act of April 27, 1904* (*33 Stats., 401*).

663d. Hereafter the Military Secretary's Department of the Army shall be known as the Adjutant-General's Department, the senior in rank of the officers of said department shall be designated by the title of The Adjutant-General, the other officers of the Department shall be designated by the title of Adjutant-General, and The Military Secretary's Office of the War Department shall be known as the Adjutant-General's Office. *Act of March 2, 1907 (34 Stats., 1158).*

THE RECRUITING SERVICE.

OATH OF ENLISTMENT.

679a. Hereafter the Secretary of War shall be authorized to detach from the Army at large such number of enlisted men as may be necessary to perform duty at the various recruit depots and the United States military prison, and of the enlisted men so detached, and while performing such duty, there shall be allowed for each depot and the prison one who shall have the rank, pay, and allowances of battalion or squadron sergeant-major, and for each recruit and prison company one who shall have the rank, pay, and allowances of first sergeant, five the rank, pay, and allowances of sergeant, and six the rank, pay, and allowances of corporal, of the arm of the service to which they respectively belong. *Act of June 12, 1906 (34 Stats., 242).*

(See paragraph 679.)

679b. Hereafter recruit and prison companies shall have noncommissioned officers, musicians, artificers and cooks of the number and grades allowed by law for companies of infantry. *Act of March 2, 1907 (34 Stats., 1160).*

(See paragraphs 679 and 679*a*.)

CHAPTER XVII.

THE JUDGE-ADVOCATE-GENERAL'S DEPARTMENT.

PROMOTIONS, APPOINTMENTS, DETAILS.

694a. Vacancies created or caused by this Act in the grade of major may be filled by appointment of officers holding commissions as judge-advocate of volunteers since April twenty-first, eighteen hundred and ninety-eight. Vacancies which may occur thereafter in the grade of major in the Judge-Advocate-General's Department shall be filled by the appointment of officers of the line, or of persons who have satisfactorily served as judge-advocates of volunteers since April twenty-first, eighteen hundred and ninety-eight, or of persons from civil life who at date of appointment are not over thirty-five years of age and who shall pass a satisfactory examination to be prescribed by the Secretary of War. *Sec. 15, Act of February 2, 1901 (31 Stats., 751).*

(This paragraph takes the place of paragraph 694, from which part of the text was omitted.)

CHAPTER XVIII.

THE QUARTERMASTER'S DEPARTMENT.

PROMOTIONS, TRANSFERS, AND DETAILS.

706a. The military storekeeper now on duty at the White House as doorkeeper to the President may be continued in that employment and shall receive the full pay and allowances of his grade from the date of his retirement until relieved by the President. *Act of June 30, 1902 (32 Stats., 511).*

POST QUARTERMASTER-SERGEANTS.

707a. Two hundred quartermaster-sergeants, at four hundred and eight dollars each. *Act of April 23, 1904 (33 Stats., 261).*

(See paragraph 707.)

THE PROCUREMENT OF SUPPLIES.

714a. For providing prizes to be established by the Secretary of War for enlisted men of the Army who graduate from the Army schools for bakers and cooks, the total amount of such prizes at the various schools not to exceed nine hundred dollars per annum, * * * dollars. *Act of March 2, 1907 (34 Stats., 1166).*

(See paragraph 714.)

715a. For continuing the construction, equipment, and maintenance of suitable buildings at military posts and stations for the conduct of the post exchange, school, library, reading, lunch, amusement rooms, and gymnasium, to be expended in the discretion and under the direction of the Secretary of War, five hundred thousand dollars: *Provided*, That not more than forty thousand dollars of the above appropriation shall be expended at any one post or station. *Act of April 23, 1904 (33 Stats., 270).*

(See paragraphs 715 and 1551.)

716a. No part of the appropriations for the Quartermaster's Department shall be expended on printing, unless the same shall be done by contract after due notice and competition, except in such cases as the emergency will not admit of the giving notice of competition, and in cases where it is impracticable to have the necessary printing done by contract the same may be done, with the approval of the Secretary of War, by the purchase of material and the hire of necessary labor for the purpose. *Act of March 2, 1907 (34 Stats., 1167).*

(This amends paragraph 716 by adding to the conditional prohibition the "purchase of material.")

719a. Whenever the ice machines, steam laundries, and electric plants shall not come in competition with private enterprise for sale to the public, and in the opinion of the Secretary of War it becomes necessary to the economical use and administration of such ice machines, steam laundries, and electric plants as have been or may hereafter be established in pursuance of law, surplus ice may be disposed of, laundry work may be done for other branches of the Government, and surplus electric light and power may be sold on such terms and in accordance with such regulations as may be prescribed by the Secretary of War: *Provided*, That the funds received from such sales and in payment of such laundry work shall be used to defray the cost of operation of said ice, laundry, and electric plants; and the sales and expenditures herein provided for shall be accounted for in accordance with the methods prescribed by law, and any sums remaining, after such cost of maintenance and operation have been defrayed, shall be deposited in the Treasury to the credit of the appropriation from which the cost of operation of such plant is paid. *Act of March 2, 1907 (34 Stats., 1167).*

TRANSPORTATION.

720a. In time of war or threatened war preference and precedence shall, upon the demand of the President of the United States, be given, over all other traffic, to the transportation of troops and material of war, and carriers shall adopt every means within their control to facilitate and expedite the military traffic. *Sec. 2, Act of June 29, 1906 (34 Stats., 587).*

USE OF TRANSPORTS.

724a. No part of this appropriation shall be applied to the payment of the expenses of using transports in any other Government work than the transportation of the Army, its supplies and employees; and when, in the opinion of the Secretary of War, accommodations are available, transportation may be provided for the officers, enlisted men, employees, and supplies of the Navy, the Marine Corps, and for members and employees of the Philippine and Hawaiian governments, officers of the War Department, Members of Congress, other officers of the Government while traveling on official business, and without expense to the United States, for the families of those persons herein authorized to be transported, and when accommodations are available, transportation may be provided for general passengers to the island of Guam, rates and regulations therefor to be prescribed by the Secretary of War. *Act of March 2, 1907* (*34 Stats., 1170*).

PUBLIC ANIMALS; VETERINARIANS.

732a. When practicable, horses shall be purchased in the open market at all military posts or stations, when needed, at a maximum price to be fixed by the Secretary of War. *Act of March 2, 1907* (*34 Stats., 1168*).

(This paragraph amends paragraph 732.)

FUEL AND FORAGE.

740a. Hereafter, fuel may be furnished to commissioned officers on the active list by the Quartermaster's Department, for the actual use of such officers only, at the rate of three dollars per cord for standard oak wood, or at an equivalent rate for other kinds of fuel, the amount so furnished to each to be limited to the officer's actual personal necessities as certified to by him. *Act of June 12, 1906* (*34 Stats., 250*).

740b. Hereafter the heat and light actually necessary for the authorized allowance of quarters for officers and enlisted men shall be furnished at the expense of the United States under such regulations as the Secretary of War may prescribe. *Act of March 2, 1907* (*34 Stats., 1167*).

OFFICERS' HORSES.

741a. When a mounted officer of the line is ordered to duty beyond the seas or to make a change of station in the United States in which the cost of transportation for the private horses which he is required to keep exceeds the sum allowed for that purpose in the Army Regulations, the Secretary of War is authorized, under such regulations in respect to inspection and valuation as he may prescribe, to permit the purchase of said horses by the Quartermaster's Department at a price not exceeding the average contract price paid for horses during the preceding fiscal year, from which sum shall be deducted one-seventh of such contract price for each year, or major fraction of a year, which may have elapsed since date of purchase by said officer. *Act of March 2, 1903* (*32 Stats., 937*).

741b. Nothing in the Act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year nineteen hundred and seven, or any other Act, shall hereafter be held or construed so as to deprive officers of the Army, wherever on duty in the military service of the United States, of forage, bedding, shoeing, or shelter for their authorized number of horses, or of any means of transportation or maintenance therefor for which provision is made by the terms of this Act. *Act of March 2, 1907 (34 Stats., 1166).*

WORKING PARTIES AND EXTRA DUTY PAY.

745a. Extra pay * * * shall not be paid to any enlisted man who receives extra-duty pay under existing laws or army regulations. *Act of March 2, 1907 (34 Stats., 1066).*

(See paragraph 745).

CLOTHING AND BEDDING.

750a. For indemnity to officers and men of the Army for clothing and bedding, and so forth, destroyed since April twenty-second, eighteen hundred and ninety-eight, by order of medical officers of the Army for sanitary reasons, four million dollars. *Act of June 30, 1902, (32 Stats., 517).*

(This provision appears also in subsequent army appropriation acts, and its effect is to broaden the scope of paragraph 750 within certain dates.)

ACCOUNTABILITY FOR CLOTHING.

753a. Clothing balances accumulating to the soldier's credit under section thirteen hundred and two shall, when payable to him upon his discharge, be paid out of the appropriation for pay of the Army for the then current fiscal year. *Act of June 12, 1906 (34 Stats., 246).*

(This paragraph amends section 1308 of the Revised Statutes. See paragraph 753.)

CHAPTER XIX.

THE SUBSISTENCE DEPARTMENT.

POST COMMISSARY-SERGEANTS.

762a. Two hundred post commissary-sergeants, at four hundred and eight dollars each, eighty-one thousand six hundred dollars. *Act of April 23, 1904 (33 Stats., 261).*

(See paragraph 762.)

DUTIES.

768a. Hereafter officers intrusted with the disbursement of funds for the subsistence of the Army are hereby authorized to keep, at their own risk, in their personal possession for disbursement, such restricted amounts of subsistence funds for facilitating payments of small amounts to public creditors as shall from time to time be authorized by the Secretary of War. *Act of March 2, 1907* (*34 Stats., 1166*).

THE RATION.

769a. For difference between the cost of the ration at twenty-five cents and the cost of rations differing in whole or in part from the ordinary ration, to be issued to enlisted men in camp in the United States during periods of recovery from low conditions of health consequent upon service in unhealthy regions or in debilitating climates (to be expended only under special authority of the Secretary of War); and for ice to organizations of enlisted men stationed at such places as the Secretary of War may determine; in all, seven million dollars, to be expended under the direction of the Secretary of War, and accounted for as "Subsistence of the Army," and for that purpose to constitute one fund. *Act of April 23, 1904* (*38 Stats., 268*).

770a. Hereafter the emergency ration prescribed for use on emergent occasions shall, when issued, be furnished in addition to the regular ration under such regulations as may be prescribed by the Secretary of War. *Act of March 2, 1907* (*34 Stats., 1165*).

(See section 5 of paragraph 770.)

COMMUTATION OF RATIONS.

791a. For payment of commutation of rations in lieu of the regular established ration for members of the Nurse Corps (female) while on duty in hospital, and for enlisted men, applicants for enlistment held under observation, and general prisoners sick therein, at the rate of thirty cents per ration (except that at the General Hospital at Fort Bayard, New Mexico, fifty cents per ration is authorized for enlisted patients in said hospital) to be paid to the surgeon in charge, * * * dollars. *Act of March 2, 1907* (*34 Stats., 1166*).

(This paragraph amends paragraph 791. See paragraphs 769a and 773.)

CHAPTER XX.

THE PAY DEPARTMENT.

DUTIES.

801a. All the money hereinbefore appropriated for pay of the Army and miscellaneous shall be disbursed and accounted for by officers of the Pay Department as pay of the Army, and for that purpose shall constitute one fund. *Act of April 23, 1904* (*33 Stats., 267*).

801b. Hereafter all payments to the militia under the provisions of section fifteen of the Act of Congress approved January twenty-first, nineteen hundred and three, and all allowances for mileage shall be made solely from the sums herein appropriated for such purposes. *Act of April 23, 1904 (33 Stats., 267).*

(See paragraphs 1662a and 1662b.)

801c. All the accounts of individual paymasters shall be analyzed under the several heads of the appropriation and recorded in detail by the Paymaster-General of the Army before said accounts are forwarded to the Treasury Department for final audit. *Act of April 23, 1904 (33 Stats., 267).*

801d. All the money hereinbefore appropriated, except the appropriation for mileage of officers and contract surgeons when authorized by law, for pay of the Army and miscellaneous shall be disbursed and accounted for by officers of the Pay Department as pay of the Army, and for that purpose shall constitute one fund. *Act of June 12, 1906 (34 Stats., 248).*

(This paragraph takes the place of paragraph 801a.)

801e. Hereafter all the accounts of individual paymasters shall be analyzed under the several heads of the appropriation and recorded in detail by the Paymaster-General of the Army before said accounts are forwarded to the Treasury Department for final audit, and the Secretary of War may hereafter authorize the assignment to duty in the office of the Paymaster-General, not to exceed five paymasters' clerks, now authorized by law. *Act of March 2, 1905 (33 Stats., 832).*

(This paragraph takes the place of paragraph 801c.)

PAY OF COMMISSIONED OFFICERS.

811a. Hereafter all commissioned officers of the Army may transfer or assign their pay accounts, when due and payable, under such regulations and restrictions as the Secretary of War may prescribe. *Act of March 2, 1907 (34 Stats., 1159).*

(See paragraph 909a.)

RETIRED OFFICERS.

824a. No part of this sum shall be used for payment of further increase of longevity pay to officers now on the retired list, and officers hereafter retired from active service shall not be therefrom allowed or paid any increase of longevity pay above the sum allowed and paid to such officers at the date of retirement, unless retired on account of wounds received in battle. *Act of June 30, 1902 (32 Stats., 511).*

824b. Hereafter, except in case of officers retired on account of wounds received in battle, no officer now on the retired list shall be allowed or paid any further increase of longevity pay, and officers hereafter retired, except as herein provided, shall not be allowed or paid any further increase of longevity pay above that which had accrued at date of their retirement. *Act of March 2, 1903* (*32 Stats., 932*).

(This paragraph changes the law heretofore existing. See note 5 to paragraph 824.)

PAY DURING ABSENCE.

828a. Leaves to be absent from the Philippine Islands, other than to return to the United States, which may be granted officers of the Army serving in said islands and sailing from Manila, shall be regarded as taking effect on the dates such officers reach Manila, and as terminating on the dates of their departure from Manila, in returning to their stations. *Act of March 2, 1907* (*34 Stats., 1171*).

BARRACKS AND QUARTERS.

830a. At all posts and stations where there are public quarters belonging to the United States officers may be furnished with quarters in kind in such public quarters, and not elsewhere, by the Quartermaster's Department, assigning to the officers of each grade, respectively, such number of rooms as is stated in the following table, namely: Second lieutenants, two rooms; first lieutenants, three rooms; captains, four rooms; majors, five rooms; lieutenant-colonels, six rooms; colonels, seven rooms; brigadier-generals, eight rooms; major-generals, nine rooms; lieutenant-general, ten rooms: *Provided further*, That at places where there are no public quarters commutation therefor may be paid by the Pay Department to the officer entitled to the same at a rate not exceeding twelve dollars per month per room. *Act of March 2, 1907* (*34 Stats., 1168*).

(This paragraph amends section 9 of the act of June 17, 1878, 20 Stats., page 151, and takes the place of paragraph 830.)

TRAVEL ALLOWANCES.

840a. Hereafter officers, active and retired, when traveling under competent orders without troops, and retired officers who have so traveled since March third, nineteen hundred and five, shall be paid seven cents per mile and no more; distances to be computed and mileage to be paid over the shortest usually traveled routes, with deduction as hereinafter provided; and payment and settlement of mileage accounts of officers shall be made according to distances and deductions computed over routes established and by mileage tables prepared by the Paymaster-General of the Army under the direction of the Secretary of War. *Act of June 12, 1906 (34 Stats., 246).*

(This paragraph amends paragraph 840.)

840b. When the station of an officer is changed while he is on leave of absence he will on joining the new station be entitled to mileage for the distance to the new station from the place where he received the order directing the change, provided the distance be no greater than from the old to the new station; but if the distance be greater he will be entitled to mileage for a distance equal to that from the old to the new station only. *Act of June 12, 1906 (34 Stats., 247).*

(This paragraph is a reenactment of similar provisions contained in the urgent deficiencies appropriation act of February 27, 1907, 34 Stats., 32.)

841a. For all sea travel actual expenses only shall be paid to officers, contract surgeons, contract dental surgeons, and veterinarians, to paymasters' clerks, and to the expert accountant of the Inspector-General's Department, when traveling on duty under competent orders, with or without troops, and the amount so paid shall not include any shore expenses at port of embarkation or debarkation; but for the purpose of determining allowances for all travel under orders, or for officers and enlisted men on discharge, travel in the Philippine Archipelago, the Hawaiian Archipelago, the home waters of the United States, and between the United States and Alaska shall not be regarded as sea travel and shall be paid for at the rates established by law for land travel within the boundaries of the United States. *Act of June 12, 1906 (43 Stats., 247).*

(This paragraph takes the place of paragraphs 841 and 847a.)

843a. Officers who so desire may, upon application to the Quartermaster's Department, be furnished under their orders transportation requests for the entire journey by land, exclusive of sleeping and parlor car accommodations, or by water; and the transportation so furnished shall, if travel was performed under a mileage status, be a charge against the officer's mileage account, to be deducted at the rate of three cents per mile by the paymaster paying the account, and of the amount so deducted there shall be turned over to an authorized officer of the Quartermaster's Department three cents per mile for transportation furnished, except over any railroad which is a free or fifty per centum land-grant railroad, for the credit of the appropriation for the transportation of the Army and its supplies. *Act of June 12, 1906 (34 Stats., 246).*

(This paragraph takes the place of paragraph 843.)

844a. When the established route of travel shall, in whole or in part, be over the line of anv railroad on which the troops and supplies of the United States are entitled to be transported free of charge, or over any fifty per centum land-grant railroad, officers traveling as herein provided for shall, for the travel over such roads, be furnished with transportation requests, exclusive of sleeping and parlor car accommodations, by the Quartermaster's Department. *Act of June 12, 1906 (34 Stats., 246).*

(This paragraph takes the place of paragraph 844.)

MILEAGE TO PAYMASTERS' CLERKS AND TO THE EXPERT ACCOUNTANT OF THE INSPECTOR-GENERAL'S DEPARTMENT.

847a. Hereafter actual expenses only shall be paid to paymasters' clerks and the expert accountant of the Inspector-General's Department for sea travel when traveling on duty to, from, or between our island possessions. *Act of June 30, 1902 (32 Stats., 511).*

(See paragraph 847.)

PAY OF ENLISTED MEN.

862a. Hereafter first-class gunners of field artillery shall receive two dollars per month and second-class gunners one dollar per month in addition to their pay. *Act of April 23, 1904 (33 Stats., 260).*

(See paragraph 1444.)

ADDITIONAL PAY.

865a. Expert riflemen, hereafter qualifying as such, shall receive one dollar a month in addition to their pay. *Act of March 2, 1903 (32 Stats., 929).*

865b. Hereafter enlisted men qualifying as expert riflemen shall receive in addition to their pay three dollars per month; those qualifying as sharpshooters, two dollars per month, and those qualifying as marksmen, one dollar per month, under such regulation as the Secretary of War may prescribe. *Act of June 12, 1906 (34 Stats., 241).*

(This takes the place of paragraph 865a.)

REENLISTMENT AND CONTINUOUS SERVICE PAY.

869a. All enlisted men of the Regular Army who served as commissioned officers of United States Volunteers organized in eighteen hundred and ninety-eight and eighteen hundred and ninety-nine, or who have served or may be now serving as such in the Porto Rico Provisional Regiment or in the Philippine Scouts, who, upon their muster out, have returned or may return to the ranks of the Regular Army, shall have such period of service counted as if it had been rendered as enlisted men, and that they be entitled to all continuous-service pay and to count, in computing the time necessary to enable them to retire, as enlisted men. *Act of March 2, 1903 (32 Stats., 934).*

(See paragraphs 1381 and 1381a.)

869b. All enlisted men of the Regular Army who have been appointed commissioned officers of Philippine Scouts subsequent to March second, nineteen hundred and three, or who may hereafter be so appointed, and who, upon their muster out, have returned or may return to the ranks of the Regular Army, shall have such period of service counted as if it had been rendered as enlisted men, and that they be entitled to all continuous service pay and to count, in computing the time necessary to enable them to retire, as enlisted men. *Act of June 12, 1906 (34 Stats., 247).*

(This paragraph amends paragraph 869a.)

DEPOSITS.

879a. Any enlisted man of the Army may deposit his savings, in sums not less than five dollars, with any army paymaster, who shall furnish him a deposit book, in which shall be entered the name of the paymaster and of the soldier, and the amount, date, and place of such deposit. The amount so deposited shall be accounted for in the same manner as other public funds, and shall be deposited in the Treasury of the United States and kept as a separate fund, known as pay of the Army deposit fund, repayment of which to the enlisted man on discharge from the service shall be made out of the fund created by said deposits, and shall not be subject to forfeiture by sentence of court-martial, but shall be forfeited by desertion, and shall not be permitted to be paid until final payment on discharge, or to the heirs or representatives of a deceased soldier, and that such deposits be exempt from liability for such soldier's debts: *Provided*, That the Government shall be liable for the amount deposited to the person so depositing the same. *Act of June 12, 1906 (34 Stats., 246).*

(This paragraph amends Section 1305 of the Revised Statutes and takes the place of paragraph 879.)

STOPPAGES AND DEDUCTIONS.

889a. So much of section forty-eight hundred and nineteen, Revised Statutes, as requires that twelve and one-half cents per month be deducted from the pay of retired enlisted men of the Army and passed to the credit of the Commissioners of the Soldiers' Home in the District of Columbia, be, and the same is hereby, repealed. *Act of June 12, 1906 (34 Stats., 242).*

(This paragraph supersedes paragraphs 889 and 2271).

UNIVE OF CALIFO

CHAPTER XXI.

THE MEDICAL DEPARTMENT.

CONTRACT SURGEONS—DENTAL SURGEONS.

907a. For two hundred and fifty contract surgeons, four hundred and fifty thousand dollars. *Act of April 23, 1904 (33 Stats., 266).*

(See paragraph 907.)

908a. Hereafter the number of dental surgeons authorized by law shall be thirty-one, of which number one shall be detailed to the United States Military Academy. *Act of March 2, 1907 (34 Stats., 1163).*

(This paragraph amends paragraph 908.)

909a. Hereafter contract surgeons and contract dental surgeons on duty in Alaska, Hawaii, the Philippine Islands, and Porto Rico may transfer or assign their pay accounts, when due and payable, in the methods now provided by regulations for commissioned officers of the Army. *Act of April 23, 1904 (33 Stats., 266).*

909b. For the pay of civilian physicians employed to examine physically applicants for enlistment and enlisted men, and to render other professional services from time to time under proper authority, * * * dollars. *Act of March 2, 1907 (34 Stats., 1172).*

DUTIES.

910a. The Surgeon-General of the Army, the Surgeon-General of the Navy, and the supervising Surgeon-General of the Marine-Hospital Service, are hereby constituted a board with authority, subject to the approval of the Secretary of the Treasury, to promulgate from time to time such rules as may be necessary in the judgment of said board to govern the issue, suspension, and revocation of licenses for the maintenance of establishments for the propagation and preparation of viruses, serums, toxins, antitoxins, and analogous products, applicable to the prevention and cure of diseases of man, intended for sale in the District of Columbia, or to be sent, carried, or brought for sale from any State, Territory, or the District of Columbia, into any other State, Territory, or the District of Columbia, or from the United States into any foreign country, or from any foreign country into the United States: *Provided*, That all licenses issued for the maintenance of establishments for the propagation and preparation in any foreign country of any virus, serum, toxin, antitoxin, or product aforesaid, for sale, barter, or exchange in the United

States, shall be issued upon condition that the licentiates will permit the inspection of the establishments where said articles are propagated and prepared, in accordance with section three of this Act. *Sec. 4, Act of July 1, 1902 (32 Stats., 729).*

910b. There shall be an advisory board for the hygienic laboratory provided by the Act of Congress approved March third, nineteen hundred and one, for consultation with the Surgeon-General of the Public Health and Marine-Hospital Service relative to the investigations to be inaugurated, and the methods of conducting the same, in said laboratory. Said board shall consist of three competent experts, to be detailed from the Army, the Navy, and the Bureau of Animal Industry by the Surgeon-General of the Army, the Surgeon-General of the Navy, and the Secretary of Agriculture, respectively, which experts, with the director of the said laboratory, shall be ex officio members of the board, and serve without additional compensation. Five other members of said board shall be appointed by the Surgeon-General of the Public Health and Marine-Hospital Service, with the approval of the Secretary of the Treasury, who shall be skilled in laboratory work in its relation to the public health, and not in the regular employment of the Government. The said five members shall each receive compensation of ten dollars per diem while serving in conference, as aforesaid, together with allowance for actual and necessary traveling expenses and hotel expenses while in conference. Said conference is not to exceed ten days in any one fiscal year. The term of service of the five members of said board, not in the regular employment of the Government, first appointed shall be so arranged that one of said members shall retire each year, the subsequent appointments to be for a period of five years. Appointments to fill vacancies occurring in a manner other than as above provided shall be made for the unexpired term of the member whose place has become vacant. *Sec. 5, Act of July 1, 1902 (32 Stats., 713).*

913a. When a contract surgeon is in charge of a hospital he shall have the same authority as a commissioned medical officer. *Act of April 23, 1904 (33 Stats., 266).*

(See paragraph 907 and note thereto; see also A. R. 1418 and 1421 of 1904.)

MEDICAL ATTENDANCE—PHILIPPINE CONSTABULARY.

913b. Whenever it shall be made to appear to the satisfaction of the Chief of the Philippines Constabulary, or of an assistant chief of the Philippines Constabulary in charge of an established district, that an officer or enlisted man of the Philippines Constabulary is suffering from illness or injury incurred in line of duty and that there is not within reach or available a medical officer required by law to render medical or surgical attendance to such officer or enlisted man, as provided by law, the Chief of the Philippines Constabulary, or an assistant chief of the Philippines Constabulary, as herein defined, may specially authorize the employment of an available medical officer or contract surgeon of the United States Army to render such medical attendance as may be required, and pay therefor in accordance with the prescribed schedule of fees for medical services in the Philippines Constabulary.

Sec. 2. In any case in which an officer or enlisted man of the Philippines Constabulary entitled to medical treatment is received at a military hospital under the control of the United States military authorities, the regular schedule of fees for subsistence and attendance at such hospital shall be paid and no more, and in such cases payment shall be made on proper vouchers by the paymaster of the Philippines Constabulary to the chief surgeon of the Division of the Philippines, and not as a personal fee to any officer in charge of such military hospital.

Sec. 3. The appropriations for medical attendance of the Philippines Constabulary are hereby made available for payment for medical attendance as herein provided, subject to the conditions prescribed for such attendance in Act Numbered Eight hundred and seven, that officers shall be entitled only to reimbursement for hospital charges incurred by them by reason of injury or disability received in line of duty.

Sec. 4. In all cases in which suspensions have been made by the Auditor for the Philippine Islands on account of payments made by disbursing officers for the Philippines Constabulary to medical officers or contract surgeons of the United States Army for medical services rendered to members of the Philippines Constabulary, and such payments have not been refunded, the Auditor is hereby authorized to credit the accounts of such disbursing officers with the amounts so suspended, and the appropriations against which the same were at the time charged are hereby made available for such payments, and for this purpose and to this extent this Act is made retroactive.

Sec. 5. In cases in which payments have been made by provincial treasurers, upon the orders of the provincial boards, to officers of the United States Army or to medical officers receiving salaries from the Insular Government but whose duties did not require them to render such service, for medical attendance upon provincial prisoners, the Auditor is hereby authorized to allow credit in the accounts of such provincial treasurers for such payments when it shall be shown to his satisfaction that there was available no medical officer required by law to perform such medical service, the provisions of Act Numbered One hundred and forty-eight to the contrary notwithstanding: *Provided*, That such payments are reasonable, and a certificate of the Commissioner of Public Health that the fees charged in any case are reasonable may be accepted by the Auditor as final. The president of a provincial board of health or of a municipal board of health may be required to render, without charge, to any officer or enlisted man of the Philippines Constabulary, or to a provincial prisoner, such medical service as may be needed in any case, upon notice by the officer in immediate command of such Constabulary officer or enlisted man or by the governor of the province, as the case may be, of the necessity for such service; or to any indigent person when directed to render such service by the provincial governor or by a municipal president, as the case may be: *Provided*, That in no case shall the president of a provincial board of health or the president of a municipal board of health be paid for medical services rendered to any person authorized by law to receive medical attendance at the expense of the Insular Government or at the expense of a province. *Secs. 1 to 5, Act of the Philippine Commission of November 7, 1903 (No. 985).*

THE HOSPITAL CORPS.

914a. The Hospital Corps of the United States Army shall consist of sergeants first class, sergeants, corporals, privates first class, and privates. *Act of March 2, 1903 (32 Stats., 930).*

(This paragraph amends paragraph 914. See also paragraphs 915–921, and 924.)

919a. The rank and pay of sergeants first class, sergeants, and privates first class shall be as now provided by law for hospital stewards, acting hospital stewards, and privates of the Hospital Corps; corporals shall receive twenty dollars per month and privates sixteen dollars, with such increase on account of length of service as is now or may hereafter be allowed by law to other enlisted men. *Act of March 2, 1903 (32 Stats., 930).*

(See paragraphs 923 and 924).

924a. The Secretary of War is authorized to organize companies of instruction, ambulance companies, field hospital, and other detachments of the Hospital Corps as the necessities of the service may require. *Act of March 2, 1903 (32 Stats., 930).*

PURCHASES OF MEDICAL SUPPLIES.

932a. Purchase of medicines and medical stores, or the engagement of services not personal for the Medical Department of the Army, may be made by the Medical Department in open market in the manner common among business men when the aggregate of the amount required does not exceed two hundred dollars, but every such purchase or employment shall be promptly reported to the Secretary of War. *Act of April 23, 1904* (*33 Stats.*, *272*).

(This paragraph amends paragraph 932.)

SALE OF MEDICAL SUPPLIES.

934a. Hereafter civilian employees of the Army stationed at military posts may, under regulations to be made by the Secretary of War, purchase necessary medical supplies when prescribed by a medical officer of the Army. *Act of April 23, 1904* (*33 Stats.*, *273*).

(This paragraph amends paragraph 934.)

935a. Hereafter all moneys arising from dispositions of serviceable medical and hospital supplies authorized by law and regulation shall constitute one fund on the books of the Treasury Department, which shall be available to replace medical and hospital supplies throughout the fiscal year in which the dispositions were effected and throughout the following fiscal year. *Act of June 12, 1906* (*34 Stats.*, *256*).

MISCELLANEOUS.

935b. For medical care and treatment not otherwise provided for, including care and subsistence in private hospitals, of officers, enlisted men, and civilian employees of the Army, of applicants for enlistment, and of prisoners of war and other persons in military custody or confinement, when entitled thereto by law, regulation, or contract: *Provided*, That this shall not apply to officers and enlisted men who are treated in private hospitals or by civilian physicians while on furlough, * * * dollars. *Act of March 2, 1907* (*34 Stats.*, *1172*).

935c. For the proper care and treatment of epidemic and contagious diseases in the Army or at military posts or stations, including measures to prevent the spread thereof, and the payment of reasonable damages not otherwise provided for, for bedding and clothing injured or destroyed in such prevention, * * * dollars. *Act of March 2, 1907* (*34 Stats.*, *1172*).

NATIONAL SANITARIUM AT HOT SPRINGS, SOUTH DAKOTA.

939a. One hundred and fifty thousand dollars is hereby appropriated for the erection of a National Sanitarium for Disabled Volunteer Soldiers at Hot Springs, in the State of South Dakota, which shall be erected by and under the direction of the Board of Managers of the National Home for Disabled Volunteer Soldiers, which Sanitarium, when in a condition to receive members, shall be subject to such rules, regulations, and restrictions as shall be provided by said Board of Managers: *Provided*, That such Sanitarium shall be erected on land donated to the United States by the people of Hot Springs, South Dakota, and accompanied with a deed of perpetual lease to one or more of the medical or hot springs for the use of the above-named Sanitarium, the location and area of the land and springs of hot water to be selected by the Board of Managers of the National Home for Disabled Volunteer Soldiers, or such persons as they may appoint to make the selection of location and hot springs, and that exclusive jurisdiction shall be vested in said Board of Managers over the premises occupied by said Sanitarium as over other realty held by said Board until further enactment by the Congress of the United States. *Sec. 1, act of May 29, 1902 (32 Stats., 282).*

939b. The further sum of twenty thousand dollars is hereby appropriated, to be used for the transportation to and from said Sanitarium of such patients as may be ordered to said Sanitarium by said Board of Managers and for equipping and maintaining said Sanitarium, subject to the aforesaid rules and regulations of said Board of Managers: *Provided*, That any member of the National Home for Disabled Volunteer Soldiers who shall be certified to said Sanitarium by the medical and legal authorities of said Board of Managers shall be admitted and treated thereat until discharged therefrom or returned to some Branch of the National Home by order of said Board of Managers. *Sec. 2, Act of May 29, 1902 (32 Stats., 282).*

GENERAL HOSPITAL, FORT BAYARD, NEW MEXICO.

939c. All persons admitted to treatment in the general hospital at Fort Bayard, New Mexico, shall, while patients in said hospital, be subject to the rules and articles for the government of the armies of the United States. *Act of June 12, 1906 (34 Stats., 255).*

939d. The hospital at Fort Bayard, New Mexico, for the treatment of tuberculosis, shall be opened to the treatment of the officers and men of the Navy and Marine Corps. *Act of March 2, 1907 (34 Stats., 1172).*

CHAPTER XXII.

The Corps of Engineers.

ORGANIZATION.

953a. The Corps of Engineers shall consist of one Chief of Engineers with the rank of brigadier-general, of ten colonels, sixteen lieutenant-colonels, thirty-two majors, forty-three captains, forty-three first lieutenants, and forty-three second lieutenants. The enlisted force provided in section eleven of this Act, and the officers serving with the organized battalions thereof, shall constitute a part of the line of the Army: *Provided*, That the Chief of Engineers shall be appointed as now provided by law, and hereafter vacancies in the Corps of Engineers in all other grades above that of second lieutenant shall be filled by promotion, according to seniority, from the Corps of Engineers. Any vacancies occurring at any time in the grade of second lieutenant shall be left for future promotions from the corps of cadets at the United States Military Academy. *Act of April 23, 1904 (33 Stats., 263).*

(This paragraph contains an amendment to section 22 of the act of February 2, 1901. See paragraph 953. See also paragraphs 954–956, and 962.)

PUBLIC BUILDINGS AND GROUNDS.

978a. Section seventeen hundred and ninety-seven of the Revised Statutes of the United States is hereby amended to read as follows:

"SEC. 1797. That the Chief of Engineers shall have charge of the public buildings and grounds in the District of Columbia, under such regulations as may be prescribed by the President, through the War Department, except those buildings and grounds which are otherwise provided for by law; and when it shall be made to appear to the said Chief of Engineers, or to the officer under his direction having immediate charge of said public buildings and grounds, that any person or persons is in unlawful occupation of any portion of said public lands in the District of Columbia, it shall be the duty of said officer in charge thereof to notify the marshal of the District of Columbia in writing of such unlawful occupation, and the said marshal shall thereupon cause the said trespasser or trespassers to be ejected from said lands, and shall restore possession of the same to the officer charged by law with the custody thereof." *Act of April 28, 1902 (32 Stats., 152).*

(This extends the duties of the Chief of Engineers. See paragraph 978.)

978b. Hereafter no public building, or the approaches thereto, other than the Capitol building and the White House, in the District of Columbia, shall be used or occupied in any manner whatever in connection with ceremonies attending the inauguration of President of the United States, or other public function, except as may hereafter be expressly authorized by law. *Act of April 28, 1902 (32 Stats., 152).*

980a. The action of the Commissioners of the District of Columbia in heretofore granting permits for the extension of any building or buildings, or any part or parts thereof, in the District of Columbia, beyond the building line and upon the streets and avenues of said city, is hereby ratified, without prejudice, however, to the legal rights of the Government in the event of the destruction by fire or otherwise of any such structure. And hereafter no such permits shall be granted except upon special application and with the concurrence of all of said Commissioners and, where such extensions are to be placed upon buildings to be erected on land adjoining United States public reservations, the approval of the Secretary of War. *Act of June 21, 1906* (*34 Stats., 385*).

(This paragraph amends the act of March 3, 1891, 26 Stats., 868.)

THE WASHINGTON MONUMENT.

990a. For the care and maintenance of the Washington Monument, namely: For one custodian, at one hundred dollars per month; one steam engineer, at eighty dollars per month; one assistant steam engineer, at sixty dollars per month; one fireman, at fifty dollars per month; one assistant fireman, at forty-five dollars per month; one conductor of elevator car at seventy-five dollars per month; one attendant on floor, at sixty dollars per month; one attendant on top floor, at sixty dollars per month; three night and day watchmen, at sixty dollars per month each. *Act of April 28, 1904* (*33 Stats., 493*).

(This paragraph modifies the pay of certain employees as set forth in paragraph 990.)

LIGHT-HOUSE BOARD.

1028a. The following-named offices, bureaus, divisions, and branches of the public service, now and heretofore under the jurisdiction of the Department of the Treasury, and all that pertains to the same, known as the Light-House Board, the Light-House Establishment,

* * * * * * *

* * * are transferred from the Department of the Treasury to the Department of Commerce and Labor, and the same shall hereafter remain under the jurisdiction and supervision of the last-named Department. *Sec. 4, Act of February 14, 1903* (*32 Stats., 826*).

(This paragraph affects the provisions of paragraphs 1024 and 1025.)

1028b. All duties performed and all power and authority now possessed or exercised by the head of any executive department in and over any bureau, office, officer, board, branch, or division of the public service by this Act transferred to the Department of Commerce and Labor, or any business arising therefrom or pertaining thereto, or in relation to the duties performed by and authority conferred by law upon such bureau, officer, office, board, branch, or division of the public service, whether of an appellate or revisory character or otherwise, shall hereafter be vested in and exercised by the head of the said Department of Commerce and Labor.

All duties, power, authority and jurisdiction, whether supervisory, appellate or otherwise, now imposed or conferred upon the Secretary of the Treasury by Acts of Congress relating to merchant vessels or yachts, their measurement, numbers, names, registers, enrollments, licenses, commissions, records, mortgages, bills of sale, transfers, entry, clearance, movements and transportation of their cargoes and passengers, owners, officers, seamen, passengers, fees, inspection, equipment for the better security of life, and by Acts of Congress relating to tonnage tax, boilers on steam vessels, the carrying of inflammable, explosive or dangerous cargo on vessels, the use of petroleum or other similar substances to produce motive power and relating to the remission or refund of fines, penalties, forfeitures, exactions or charges incurred for violating any provision of law relating to vessels or seamen or to informer's shares of such fines, and by Acts of Congress relating to the Commissioner and Bureau of Navigation, Shipping Commissioners, their officers and employees, Steamboat-Inspection Service and any of the officials thereof, shall be and hereby are transferred to and imposed and conferred upon the Secretary of Commerce and Labor from and after the time of the transfer of the Bureau of Navigation, the Shipping Commissioners and the Steamboat-Inspection Service to the Department of Commerce and Labor, and shall not thereafter be imposed upon or exercised by the Secretary of the Treasury. And all Acts or parts of Acts inconsistent with this Act are, so far as inconsistent, hereby repealed. *Sec. 10, Act of February 14, 1903 (32 Stats., 829).*

THE MISSISSIPPI RIVER COMMISSION.

MISCELLANEOUS PROVISIONS RESPECTING THE MISSISSIPPI RIVER.

1043a. Any funds which have been, or may hereafter be, appropriated by Congress for improving the Mississippi River between the Head of the Passes and the mouth of the Ohio River, and which may be allotted to levees, may be expended, under the direction of the Secretary of War, in accordance with the plans, specifications, and recommendations of the Mississippi River Commission, as approved by the Chief of Engineers, for levees upon any part of said river between the Head of the Passes and Cape Girardeau, Missouri. *Act of June 4, 1906 (34 Stats., 208).*

THE CALIFORNIA DÉBRIS COMMISSION.

1061a. In case a majority of the members of said Commission, within thirty days after the time so fixed, concur in the decision in favor of the petitioner or petitioners, the said Commission shall thereupon make an order directing the methods and specifying in detail the manner in which operations shall proceed in such mine or mines; what restraining or impounding works, if any, if facilities therefor can be found, shall be built and maintained; how and of what material; where to be located; and in general set forth such further requirements and safeguards as will protect the public interests and prevent injury to the said navigable rivers and the lands adjacent thereto, with such further conditions and limitations as will observe all the provisions of this Act in relation to the working thereof and the payment of taxes on the gross proceeds of the same: *Provided*, That all expense incurred in complying with said order shall be borne by the owner or owners of such mine or mines: *And provided further*, That where it shall appear to said Commission that hydraulic mining may be carried on without injury to the navigation of said navigable rivers and the lands adjacent thereto, an order may be made authorizing such mining to be carried on without requiring the construction of any restraining or impounding works or any settling reservoirs: *And provided also*, That where such an order is made a license to mine, no taxes provided for herein on the gross proceeds of such mining operations shall be collected. *Act of February 27, 1907 (34 Stats., 1002)*.

(This paragraph amends section 13 of the act of March 1, 1893, and takes the place of paragraph 1061.)

1081a. So much of the act of March third, eighteen hundred and ninety-nine, as provides that the members of the California Débris Commission shall receive only actual expenses in lieu of mileage while traveling on duty is hereby repealed, and hereafter the officers of the commission shall receive the mileage allowed by law. *Act of June 6, 1900 (31 Stats., 631)*.

(This paragraph takes the place of paragraph 1081.)

THE ISTHMIAN CANAL COMMISSION.

1085a. To enable the President to construct the canal and works appurtenant thereto as provided in this Act, there is hereby created the Isthmian Canal Commission, the same to be composed of seven members, who shall be nominated and appointed by the President, by and with the advice and consent of the Senate, and who shall serve until the completion of said canal unless sooner removed by the President, and one of whom shall be named as the chairman of said Commission. Of the seven members of said Commission at least four of them shall be persons learned and skilled in the science of engineering, and of the four at least one shall be an officer of the United States Army, and at least one other shall be an officer of the United States

Navy, the said officers respectively being either upon the active or the retired list of the Army or of the Navy. Said commissioners shall each receive such compensation as the President shall prescribe until the same shall have been otherwise fixed by the Congress. In addition to the members of said Isthmian Canal Commission, the President is hereby authorized through said Commission to employ in said service any of the engineers of the United States Army at his discretion, and likewise to employ any engineers in civil life, at his discretion, and any other persons necessary for the proper and expeditious prosecution of said work. The compensation of all such engineers and other persons employed under this Act shall be fixed by said Commission, subject to the approval of the President. The official salary of any officer appointed or employed under this Act shall be deducted from the amount of salary or compensation provided by or which shall be fixed under the terms of this Act. Said Commission shall in all matters be subject to the direction and control of the President, and shall make to the President annually and at such other periods as may be required, either by law or by the order of the President, full and complete reports of all their actings and doings and of all moneys received and expended in the construction of said work and in the performance of their duties in connection therewith, which said reports shall be by the President transmitted to Congress. And the said Commission shall furthermore give to Congress, or either House of Congress, such information as may at any time be required either by Act of Congress or by the order of either House of Congress. The President shall cause to be provided and assigned for the use of the Commission such offices as may, with the suitable equipment of the same, be necessary and proper, in his discretion, for the proper discharge of the duties thereof. *Sec. 7, Act of June 28, 1902 (32 Stats., 483).*

GOVERNMENT OF THE CANAL ZONE AT PANAMA.

1085b. The President is hereby authorized, upon the acquisition of the property of the New Panama Canal Company and the payment to the Republic of Panama of the ten millions of dollars provided by article fourteen of the treaty between the United States and the Republic of Panama, the ratifications of which were exchanged on the twenty-sixth day of February, nineteen hundred and four, to be paid to the latter Government, to take possession of and occupy on behalf of the United States the zone of land and land under water of the width of ten miles, extending to the distance of five miles on each side of the center line of the route of the canal to be constructed thereon, which said zone begins in the Caribbean sea three marine miles from mean low-water mark and extends to and across the Isthmus of Panama into the Pacific Ocean to the distance of three marine miles from mean low-water mark, and also of all islands within said zone, and in addition thereto the group of islands in the Bay of Panama named Perico, Naos, Culebra, and Flamenco, and, from time to time, of any lands and waters outside of said zone which may be necessary and convenient for the construction, maintenance, operation, sanitation, and protection of the said canal, or of any auxiliary canals or other works necessary and convenient for the construction, maintenance, operation, sanitation, and protection of said enterprise, the use, occupation, and control whereof were granted to the United States by article two of said treaty. The said zone is hereinafter referred to as " the Canal Zone." The payment of the ten millions of dollars provided by article fourteen of said treaty shall be made in lieu of the indefinite appropriation made in the third section of the Act of June twenty-eighth, nineteen hundred and two, and is hereby appropriated for said purpose.

Sec. 2. That until the expiration of the Fifty-eighth Congress, unless provision for the temporary government of the Canal Zone be sooner made by Congress, all the military, civil, and judicial powers as well as the power to make all rules and regulations necessary for the government of the Canal Zone and all the rights, powers, and authority granted by the terms of said treaty to the United States shall be vested in such person or persons and shall be exercised in such manner as the President shall direct for the government of said Zone and maintaining and protecting the inhabitants thereof in the free enjoyment of their liberty, property, and religion. *Secs. 1 and 2, Act of April 28, 1904 (33 Stats., 429).*

1085c. That the Secretary of the Treasury is hereby authorized to borrow on the credit of the United States from time to time, as the proceeds may be required to defray expenditures authorized by this Act (such proceeds when received to be used only for the purpose of meeting such expenditures), the sum of one hundred and thirty million dollars, or so much thereof as may be necessary, and to prepare and issue therefor coupon or registered bonds of the United States in such form as he may prescribe, and in denominations of twenty dollars or some multiple of that sum, redeemable in gold coin at the pleasure of the United States after ten years from the date of their issue, and payable thirty years from such date, and bearing interest payable quarterly in gold coin at the rate of two per centum per annum; and the bonds herein authorized shall be exempt from all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority: *Provided*, That said bonds may be disposed of by the Secretary of the Treasury at not less than par, under such regulations as he may prescribe, giving to all citizens of the United States an equal opportunity to subscribe therefor, but no commissions shall be allowed or paid thereon; and a sum not exceeding one-tenth of one per centum of the amount of the bonds herein authorized is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to pay the expense of preparing, advertising, and issuing the same. *Sec. 8, Act of June 28, 1902 (32 Stats., 484).*

1085d. All expenditures from the appropriation herein made for the Isthmian Canal shall be paid from, or reimbursed to the Treasury of the United States out of, the proceeds of the sale of bonds authorized in section eight of the said Act approved June twenty-eighth, nineteen hundred and two. *Sec. 1, Act of March 4, 1907 (34 Stats., 1369).*

1085e. That the two per cent bonds of the United States authorized by section eight of the Act entitled "An Act to provide for the construction of a canal connecting the waters of the Atlantic and Pacific oceans," approved June twenty-eight, nineteen hundred and two, shall have all the rights and privileges accorded by law to other two per cent bonds of the United States, and every national banking association having on deposit, as provided by law, such bonds issued under the provisions of said section eight of said Act approved June twenty-eight, nineteen hundred and two, to secure its circulating notes, shall pay to the Treasurer of the United States, in the months of January and July, a tax of one-fourth of one per cent each half year upon the average amount of such of its notes in circulation as are based upon the deposit of said two per cent bonds; and such taxes shall be in lieu of existing taxes on its notes in circulation imposed by section fifty-two hundred and fourteen of the Revised Statutes. *Section 1, Act of December 21, 1905 (34 Stats., 5).*

1085f. The President shall annually, and at such other periods as may be provided, either by law or by his order, require full and complete reports to be made to him by the persons appointed or employed by him in charge of the government of the Canal Zone, the construction of the Isthmian Canal, and the operation of the Panama Railroad, including an itemized account of all moneys received and expended, which said reports shall be by the President transmitted to Congress. The President shall annually cause to be made, by the persons appointed and employed by him in charge of the government of said Canal Zone and the construction of said canal, estimates of expenditures and appropriations, in detail as far as practicable, which estimates shall cover all annual salaries paid to persons employed on said work, excepting laborers and skilled laborers, and shall be submitted to Congress in the manner provided in section five of the Act entitled "An Act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and two, and for other purposes." And no money shall be expended for any of the purposes of constructing and maintaining said Isthmian Canal, or for any expenses incident thereto, except in accordance with appropriations made by Congress. *Sec. 3, Act of December 21, 1905 (34 Stats., 5).*

(This paragraph amends paragraph 1085*a*.)

1085g. The President is hereby authorized to cause to be entered into such contract or contracts as may be deemed necessary for the proper excavation, construction, completion, and defense of said canal, harbors, and defenses, by the route finally determined upon under the provisions of this Act. Appropriations therefor shall from time to time be hereafter made, not to exceed in the aggregate the additional sum of one hundred and thirty-five millions of dollars should the Panama route be adopted, or one hundred and eighty millions of dollars should the Nicaragua route be adopted. *Sec. 5, Act of June 28, 1902 (32 Stats., 483).*

1085h. Nothing contained in section five of the Act of June twenty-eighth, nineteen hundred and two, entitled "An Act to provide for the construction of a canal connecting the waters of the Atlantic and Pacific oceans," shall prevent the President from entering into such contract or contracts as may be deemed expedient by him for the completion of the construction of the Panama Canal. *Sec. 6, Act of March 4, 1907 (34 Stats., 1370).*

1085i. The appropriations for the pay of officers and employees of the several departments on the Isthmus under the Act of June thirtieth, nineteen hundred and six, shall apply to the pay of such officers and employees when necessarily temporarily detailed upon duty away from the Isthmus. *Sec. 7, Act of March 4, 1907 (34 Stats., 1370).*

1085j. Purchases of material and equipment for use in the construction of the Panama Canal shall be restricted to articles of domestic production and manufacture, from the lowest responsible bidder, unless the President shall, in any case, deem the bids or tenders therefor to be extortionate or unreasonable. *Joint Res. of June 25, 1906 (34 Stats., 835).*

1085k. All laws affecting imports of articles, goods, wares, and merchandise and entry of persons into the United States from foreign countries shall apply to articles, goods, wares, and merchandise and persons coming from the Canal Zone, Isthmus of Panama, and seeking entry into any State or Territory of the United States or the District of Columbia. *Act of March 2, 1905 (33 Stats., 843).*

1085l. Hereafter the accounts for the Isthmian Canal Commission shall be audited by the Auditor for the War Department. *Act of February 3, 1905 (33 Stats., 647).*

1085m. The provisions of the Act entitled "An Act relating to the limitations of the hours of daily service of laborers and mechanics employed upon the public works of the United States and of the District of Columbia," approved August first, eighteen hundred and ninety-two, shall not apply to alien laborers employed in the construction of the Isthmian Canal within the Canal Zone. *Act of February, 27, 1906 (34 Stats., 33).*

1085n. The provisions of an Act entitled "An Act relating to the limitations of the hours of daily service of laborers and mechanics employed upon the public works of the United States and of the District of Columbia," approved August first, eighteen hundred and ninety-two, and of an Act entitled "An Act making appropriations to supply urgent deficiencies in the appropriations for the fiscal year ending June thirtieth, nineteen hundred and six, and for prior years, and for other purposes," approved February twenty-seventh, nineteen hundred and six, shall not apply to unskilled alien laborers and to the foremen and superintendents of such laborers employed in the construction of the isthmian canal within the Canal Zone. *Sec. 4, Act of June 30, 1906 (34 Stats., 669).*

(This paragraph amends paragraph 1085*m*.)

FORTIFICATIONS.

1086a. Hereafter in acquiring sites for fortifications it shall be the duty of the Secretary of War, in every case of such acquirement, to purchase or otherwise procure at the same time, under this and future appropriations for this purpose, sufficient land for necessary barracks and quarters for the artillery troops required in connection with each of such fortifications; but no part of the money appropriated for military posts shall be used for the purchase of any land except as herein specifically provided. *Act of April 28, 1904 (33 Stats., 497).*

1086b. It shall be the duty of the Secretary of War to apply the money herein appropriated under the heading "Fortifications and other works of defense," in carrying on the various works, by contract or otherwise, as may be most economical and advantageous to the Government. Where said works are done by contract, such contract shall be made after sufficient public advertisement for proposals, in such manner and form as the Secretary of War shall prescribe; and such contracts shall be made with the lowest responsible bidders, accompanied by such securities as the Secretary of War shall require, conditioned for the faithful prosecution and completion of the work according to such contract. *Act of April 21, 1904 (33 Stats., 234).*

THE NAVIGABLE WATERS OF THE UNITED STATES.

1097a. Grand River in the State of Missouri above the city of Brunswick, in the county of Chariton in said State, is hereby declared to be not a navigable stream and shall be so treated by the Secretary of War and by all other authorities. *Act of February 15, 1905 (33 Stats., 715).*

RIVER AND HARBOR WORKS.

1098a. There shall be organized in the Office of the Chief of Engineers, United States Army, by detail from time to time from the Corps of Engineers, a board of five engineer officers, whose duties shall be fixed by the Chief of Engineers, and to whom shall be referred for consideration and recommendation, in addition to any other duties assigned, so far as in the opinion of the Chief of Engineers may be necessary, all reports upon examinations and surveys provided for by Congress, and all projects or changes in projects for works of river and harbor improvement heretofore or hereafter provided for. And the board shall submit to the Chief of Engineers recommendations as to the desirability of commencing or continuing any and all improvements upon which reports are required. And in the consideration of such works and projects the board shall have in view the amount and character of commerce existing or reasonably prospective which will be benefited by the improvement, and the relation of the ultimate cost of such work, both as to cost of construction and maintenance, to the public commercial interests involved, and the public necessity for the work and propriety of its construction, continuance, or maintenance at the expense of the United States. And such consideration shall be given as time permits to such works as have heretofore been provided for by Congress, the same as in the case of new works proposed. The board shall, when it considers the same necessary, and with the sanction and under orders from the Chief of Engineers, make, as a board or through its members, personal examinations of localities. And all facts, information, and arguments which are presented to the board for its consideration in connection with any matter referred to it by the Chief of Engineers shall be reduced to and submitted in writing, and made a part of the records of the Office of the Chief of Engineers. It shall further be the duty of said board, upon a request transmitted to the Chief of Engineers by the Committee on River and Harbors of the House of Representatives, or the Committee on Commerce of the Senate, in the same manner to examine and report through the Chief of Engineers upon any projects heretofore adopted by the Government or upon which appropriations have been made, and report upon the desirability of continuing the same or upon any modifications thereof which may be deemed desirable.

The board shall have authority, with the approval of the Chief of Engineers, to rent quarters, if necessary, for the proper transaction of its business, and to employ such civil employees as may, in the opinion of the Chief of Engineers, be required for properly transacting the business assigned to it, and the necessary expenses of the board shall be paid from allotments made by the Chief of Engineers from any appropriations made by Congress for the work or works to which the duties of the board pertain. *Sec. 3, Act of June 13, 1902 (32 Stats., 372).*

1103a. No appropriations heretofore or hereafter made for improving harbors and deepening channels shall be used for the construction of Government dredges for use on the Great Lakes or on the Atlantic coast north of Cape Henry unless there shall be a specific appropriation for that purpose: *Provided, however*, That this provision shall not apply to any dredge the construction of which has heretofore been authorized by the Secretary of War. *Sec. 4, Act of April 28, 1904 (33 Stats., 452).*

PURCHASE AND SALE OF LANDS.

1106a. When any land or other property which has been heretofore or may be hereafter purchased or acquired for the improvement of rivers and harbors is no longer needed, or is no longer serviceable, it may be sold in such manner as the Secretary of War may direct, and the proceeds credited to the appropriation for the work for which it was purchased or acquired; and the Secretary of War may direct the transfer of any property employed in river and harbor works, and in such event the property so transferred shall be valued and credited to the project upon which it was theretofore used and charged to the project to which it shall be transferred. The Secretary may also direct a temporary transfer of any property employed in the improvement of rivers and harbors whenever, in his judgment, such transfer would secure efficient or economical results, and such adjustment in the way of charges and credits shall be made between the projects affected as may be equitable. *Sec. 5, Act of June 13, 1902 (32 Stats., 373).*

1106b. Whenever any person, company, or corporation, municipal or private, shall undertake to secure any land or easement therein, needed in connection with a work of river and harbor improvement duly authorized by Congress, for the purpose of conveying the same to the United States free of cost, or for the purpose of constructing, maintaining, and operating locks, dry docks, or other works to be conveyed to the United States free of cost, and of constructing, maintaining and operating dams for use in connection therewith, and shall be unable for any reason to obtain the same by purchase and acquire a valid title thereto, the Secretary of War may, in his discretion, cause proceedings to be instituted in the name of the United States for the acquirement by condemnation of said land or easement, and it shall be the duty of the Attorney-General of the United States to institute and conduct such proceedings upon the request of the

Secretary of War: *Provided*, That all expenses of said proceedings and any award that may be made thereunder shall be paid by the said person, company, or corporation, to secure which payment the Secretary of War may require the said person, company, or corporation to execute a proper bond in such amount as he may deem necessary before said proceedings are commenced. *Act of June 29, 1906 (34 Stats., 632).*

(This paragraph amends paragraph 1106.)

OPERATION OF CANALS AND OTHER WORKS OF IMPROVEMENT.

1113a. That section four of the river and harbor Act of August eighteenth, eighteen hundred and ninety-four, be, and is hereby, amended so as to read as follows:

"Sec. 4. That it shall be the duty of the Secretary of War to prescribe such rules and regulations for the use, administration, and navigation of any or all canals and similar works of navigation that now are, or that hereafter may be, owned, operated, or maintained by the United States as in his judgment the public necessity may require; and he is also authorized to prescribe regulations to govern the speed and movement of vessels and other water craft in any public navigable channel which has been improved under authority of Congress, whenever, in his judgment, such regulations are necessary to protect such improved channels from injury, or to prevent interference with the operations of the United States in improving navigable waters or injury to any plant that may be employed in such operations. Such rules and regulations shall be posted, in conspicuous and appropriate places, for the information of the public; and every person and every corporation which shall violate such rules and regulations shall be deemed guilty of a misdemeanor and, on conviction thereof in any district court of the United States within whose territorial jurisdiction such offense may have been committed, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment (in the case of a natural person) not exceeding six months, in the discretion of the court." *Sec. 11, Act of June 13, 1902 (32 Stats., 374).*

(This paragraph amends paragraphs 1112 and 1113.)

BRIDGES, ETC., OVER THE NAVIGABLE WATERS OF THE UNITED STATES.

1114a. Any bridge built in accordance with the provisions of this Act shall be a lawful structure and shall be recognized and known as a post route, upon which no higher charge shall be made for the transmission over the same of the mails, the troops, and the munitions of war of the United States than the rate per mile paid for the transportation over any railroad, street railway, or public highway leading to said bridge; and the United States shall have the right to construct, maintain, and repair, without any charge therefor, telegraph and telephone lines across and upon said bridge and its approaches; and equal privileges in the use of said bridge and its approaches shall be granted to all telegraph and telephone companies. *Sec. 2, Act of March 23, 1906 (34 Stats., 85).*

1114b. When, hereafter, authority is granted by Congress to any persons to construct and maintain a dam for water power or other purposes across any of the navigable waters of the United States, such dams shall not be built or commenced until the plans and specifications for its construction, together with such drawings of the proposed construction and such map of the proposed location as may be required for a full understanding of the subject, have been submitted to the Secretary of War and Chief of Engineers for their approval, or until they shall have approved such plans and specifications and the location of such dam and accessory works; and when the plans for any dam to be constructed under the provisions of this Act have been approved by the Chief of Engineers and by the Secretary of War it shall not be lawful to deviate from such plans either before or after completion of the structure unless the modification of such plans has previously been submitted to and received the approval of the Chief of Engineers and of the Secretary of War: *Provided*, That in approving of said plans and location such conditions and stipulations may be imposed as the Chief of Engineers and the Secretary of War may deem necessary to protect the present and future interests of the United States, which may include the condition that such persons shall construct, maintain, and operate, without expense to the United States, in connection with said dam and appurtenant works, a lock or locks, booms, sluices, or any other structures which the Secretary of War and the Chief of Engineers at any time may deem necessary in the interest of navigation, in accordance with such plans as they may approve, and also that whenever Congress shall authorize the construction of a lock, or other structures for navigation purposes, in connection with such dam, the person owning such dam shall convey to the United States, free of cost, title to such land as may be required for such constructions and approaches, and shall grant to the United States a free use of water power for building and operating such constructions. *Sec. 1, Act of June 21, 1906 (34 Stats., 386).*

1114c. The right is hereby reserved to the United States to construct, maintain, and operate, in connection with any dam built under the provisions of this Act, a suitable lock or locks, or any other structures for navigation purposes, and at all times to control the said dam and the level of the pool caused by said dam to such an extent as may be necessary to provide proper facilities for navigation. *Sec. 2, Act of June 21, 1906 (34 Stats., 386).*

1114d. The person, company, or corporation building, maintaining, or operating any dam and appurtenant works, under the provisions of this Act, shall be liable for any damage that may be inflicted thereby upon private property, either by overflow or otherwise. The persons owning or operating any such dam shall maintain, at their own expense, such lights and other signals thereon and such fishways as the Secretary of Commerce and Labor shall prescribe. *Sec. 3, Act of June 21, 1906 (34 Stats., 386).*

1114e. All rights acquired under this Act shall cease and be determined if the person, company, or corporation acquiring such rights shall, at any time, fail to comply with any of the provisions and requirements of the Act, or with any of the stipulations and conditions that may be prescribed as aforesaid by the Chief of Engineers and the Secretary of War. *Sec. 4, Act of June 21, 1906 (34 Stats., 386).*

1114f. Any persons who shall fail or refuse to comply with the lawful order of the Secretary of War and the Chief of Engineers, made in accordance with the provisions of this Act, shall be deemed guilty of a violation of this Act, and any persons who shall be guilty of a violation of this Act shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine not exceeding five thousand dollars, and every month such persons shall remain in default shall be deemed a new offense and subject such persons to additional penalties therefor; and in addition to the penalties above described the Secretary of War and the Chief of Engineers may, upon refusal of the persons owning or controlling any such dam and accessory works to comply with any lawful order issued by the Secretary of War or Chief of Engineers in regard thereto, cause the removal of such dam and accessory works as an obstruction to navigation at the expense of the persons owning or controlling such dam, and suit for such expense may be brought in the name of the United States against such persons, and recovery had for such expense in any court of competent jurisdiction; and the removal of any structures erected or maintained in violation of the provisions of this Act or the order or direction of the Secretary of War or Chief of Engineers made in pursuance thereof may be enforced by injunction, mandamus, or other summary process, upon application to the circuit court in the district in which such structure may, in whole or in part, exist, and proper proceedings to this end may be instituted under the direction of the Attorney-General of the United States at the request of the Chief of Engineers or the Secretary of War; and in case of any litigation arising from any obstruction or alleged obstruction to navigation created by the construction of any dam under this Act, the cause or question arising may be tried before the circuit court of the United States in any district in which any portion of said obstruction or dam touches. *Sec. 5, Act of June 21, 1906 (34 Stats., 386).*

1114g. Whenever Congress shall hereafter by law authorize the construction of any dam across any of the navigable waters of the United States, and no time for the commencement and completion of such dam is named in said Act, the authority thereby granted shall cease and be null and void unless the actual construction of the dam authorized in such Act be commenced within one year and completed within three years from the date of the passage of such Act. *Sec. 6, Act of June 21, 1906 (34 Stats., 387).*

1114h. The right to alter, amend, or repeal this Act is hereby expressly reserved as to any and all dams which may be constructed in accordance with the provisions of this Act, and the United States shall incur no liability for the alteration, amendment, or repeal thereof to the owner or owners or any other persons interested in any dam which shall have been constructed in accordance with its provisions. *Sec. 7, Act of June 21, 1906 (34 Stats., 387).*

1114i. The word "persons" as used in this Act shall be construed to import both the singular and the plural, as the case demands, and shall include corporations, companies, and associations. *Sec. 8, Act of June 21, 1906 (34 Stats., 387).*

1115a. No bridge erected or maintained under the provisions of this Act shall at any time unreasonably obstruct the free navigation of the waters over which it is constructed, and if any bridge erected in accordance with the provisions of this Act shall, in the opinion of the Secretary of War, at any time unreasonably obstruct such navigation, either on account of insufficient height, width of span, or otherwise, or if there be difficulty in passing the draw opening or the drawspan of such bridge by rafts, steamboats, or other water craft, it shall be the duty of the Secretary of War, after giving the parties interested reasonable opportunity to be heard, to notify the persons owning or controlling such bridge to so alter the same as to render navigation through or under it reasonably free, easy, and unobstructed, stating in such notice the changes required to be made, and prescribing in each case a reasonable time in which to make such changes, and if at the end of the time so specified the changes so required have not been made, the persons owning or controlling such bridge shall be deemed guilty of a violation of this Act; and all such alterations shall be made and all such obstructions shall be removed at the expense of the persons owning or operating said bridge. The persons owning or operating any such bridge shall maintain, at their own expense, such lights and other signals thereon as the Secretary of Commerce and Labor shall prescribe. If the bridge shall be constructed with a draw, then the draw shall be opened promptly by the persons owning or operating such bridge upon reasonable signal for the passage of boats and other water craft. If tolls shall be charged for the transit over any bridge constructed under the provisions of this Act, of engines, cars, street cars, wagons, carriages, vehicles, animals, foot passengers, or other passengers, such tolls shall be reasonable and just, and the Secretary of War may, at any time, and from time to time, prescribe the reasonable rates of toll for such transit over such bridge, and the rates so prescribed shall be the legal rates and shall be the rates demanded and received for such transit. *Sec. 4, Act of March 23, 1906 (34 Stats., 85).*

(This paragraph and paragraph 1115*b* take the place of paragraphs 1115, 1116, and 1117.)

1115b. Any persons who shall fail or refuse to comply with the lawful order of the Secretary of War or the Chief of Engineers, made in accordance with the provisions of this Act, shall be deemed guilty of a violation of this Act, and any persons who shall be guilty of a violation of this Act shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished in any court of competent jurisdiction by a fine not exceeding five thousand dollars, and every month such persons shall remain in default shall be deemed a new offense and subject such persons to additional penalties therefor; and in addition to the penalties above described the Secretary of War and the Chief of Engineers may, upon refusal of the persons owning or controlling any such bridge and accessory works to comply with any lawful order issued by the Secretary of War or Chief of Engineers in regard thereto, cause the removal of such bridge and accessory works at the expense of the persons owning or controlling such bridge, and suit for such expense may be brought in the name of the United States against such persons, and recovery had for such expense in any court of competent jurisdiction; and the removal of any structures erected or maintained in violation of the provisions of this Act or the order or direction of the Secretary of War or Chief of Engineers made in pursuance thereof may be enforced by injunction, mandamus, or other summary process, upon application to the circuit court in the district in which such structure may, in whole or in part, exist, and proper proceedings to this end may be instituted under the direction of the Attorney-General of the United States at the request of the Secretary of War; and in case of any litigation arising from any obstruction or alleged obstruction to navigation created by the construction of any bridge under this Act, the cause or question arising may be tried before the circuit court of the United States in any district which any portion of such obstruction or bridge touches. *Sec. 5, Act of March 23, 1906 (34 Stats., 85).*

(See note to paragraph 1115.)

1117a. Any regulations heretofore or hereafter prescribed by the Secretary of War in pursuance of the fourth and fifth sections of the river and harbor Act of August eighteenth, eighteen hundred and ninety-four, and any regulations hereafter prescribed in pursuance of the aforesaid section four as amended by section eleven of this Act, may be enforced as provided in section seventeen of the river and harbor Act of March third, eighteen hundred and ninety-nine, the provisions whereof are hereby made applicable to the said regulations. *Sec. 6, Act of June 13, 1902 (32 Stats., 374).*

(See paragraphs 1112, 1113, 1116, 1117, and 1113a.)

1117b. All railroad companies desiring the use of any railroad bridge built in accordance with the provisions of this Act shall be entitled to equal rights and privileges relative to the passage of railway trains or cars over the same and over the approaches thereto upon payment of a reasonable compensation for such use; and in case of any disagreement between the parties in regard to the terms of such use or the sums to be paid all matters at issue shall be determined by the Secretary of War upon hearing the allegations and proofs submitted to him. *Sec. 3, Act of March 23, 1906 (34 Stats., 85).*

1117c. Whenever Congress shall hereafter by law authorize the construction of any bridge over or across any of the navigable waters of the United States, and no time for the commencement and completion of such bridge is named in said Act, the authority thereby granted shall cease and be null and void unless the actual construction of the bridge authorized in such Act be commenced within one year and completed within three years from the date of the passage of such Act. *Sec. 6, Act of March 23, 1906 (34 Stats., 86).*

1117d. The word "persons" as used in this Act shall be construed to import both the singular and the plural, as the case demands, and shall include municipalities, quasi municipal corporations, corporations, companies, and associations. *Sec. 7, Act of March 23, 1906 (34 Stats., 86).*

1117e. The right to alter, amend, or repeal this Act is hereby expressly reserved as to any and all bridges which may be built in accordance with the provisions of this Act, and the United States shall incur no liability for the alteration, amendment, or repeal thereof to the owner or owners or any other persons interested in any bridge which shall have been constructed in accordance with its provisions. *Sec. 8, Act of March 23, 1906 (34 Stats., 86).*

HARBOR LINES.

1119a. The Secretary of War * * * is hereby, empowered, subject to the restrictions and under the conditions hereinafter mentioned, to authorize the construction, extension, and maintenance of any wharf, pier, dolphin, boom, weir, breakwater, sea wall, bulkhead, jetty, or other structure on any of the lands belonging to the United States which underlie the harbor areas and navigable streams and bodies of water in or surrounding Porto Rico and the islands adjacent thereto and the filling in and dredging of such lands. *Sec. 1, Act of June 11, 1906 (34 Stats., 234).*

1119b. The word " person " as used in this Act shall be construed to import either the singular or the plural, as the case demands, and shall include individuals, municipalities, quasi-municipal corporations, corporations, companies, and associations. *Sec. 2, Act of June 11, 1906 (34 Stats., 234).*

1119c. The powers granted in the foregoing sections shall be subject, however, to the following restrictions:

(a) No authorization to any person to construct, extend, or maintain any such structure shall continue for a longer period than the period set forth in such authorization, and shall provide that the Government of the United States or with the approval of the Secretary of War the government of Porto Rico shall have the right at any time after the expiration of thirty years from the date of such authorization, and after three months' notice, to take any such structure from the owner thereof upon paying the value of the same at the time it shall be so taken, and the amount paid shall not exceed the original cost of the same as may be fixed under paragraph (f) hereof. In case the Government of the United States or the government of Porto Rico, exercising the right of purchase as aforesaid should claim that the value of the structure when seized and taken is less than its original cost, the extent of deterioration or diminution from the original value shall be determined by a board or commission of four members, two of whom shall be appointed by the Secretary of War for the Government of the United States or by the Governor of Porto Rico for the government of Porto Rico as the case may be and two by the owner of such structure. If the four members thus chosen and appointed shall not be able to agree, they shall choose by mutual agreement a referee, whose decision shall be final, but in no case shall the amount to be paid exceed the original cost as fixed under the provisions of said paragraph (f). If the four members thus chosen and appointed are unable by mutual agreement to select a referee, then the Chief of Engineers of the United States Army shall be the referee, and his decision shall be final.

All authorizations granted by the Secretary of War for any such construction, extension, or maintenance

(b) Shall be subject to alteration, amendment, or repeal by Congress;

(c) Shall provide that the wharfage fees and charges for vessels, for passengers, and for goods loaded or discharged on, from, at, or over any such structure, and for approach and entry to any such structure, shall be no greater than are just, reasonable, and fairly remunerative, and for that purpose shall at all times be subject to regulation and revision by the said Secretary of War; that such fees and charges shall be the same for all persons, and all persons shall have equal right to approach, enter, and use the said structure, subject to such reasonable rules and regulations as the grantee thereof may establish, all of which rules and regulations shall be subject to revision by the Secretary of War;

(d) That all necessary dredging in or in connection with the said structure, or the use thereof, shall be made by the grantee of the authorization;

(e) That such authorization shall be null and void unless actual construction shall be commenced within one year from the date of such authorization by the Secretary of War, and completed within three years from the date of such authorization, or within such lesser periods as may be therein fixed: *Provided*, That the Secretary of War may for due cause shown extend the time for the completion of such construction for a reasonable period.

(f) That duly verified accounts of expenditure for the construction, extension, or improvement of such structure shall be exhibited to, and filed with, the United States army engineer at the city of San Juan, Porto Rico, who shall report to the Secretary of War the entire cost of such structure, extension, or improvement to be built under such authorization.

(g) That the said structure shall not be sublet, sold, transferred, or assigned, nor shall the authorization therefor be granted, sold, transferred, or assigned without the consent of the Secretary of War, nor in any case to a person engaged, directly or indirectly, in the same line of business, in the same harbor area, navigable stream, or body of water, and that any grant, subletting, sale, transfer, or assignment in violation hereof shall be null and void;

(h) That any and all vessels owned or chartered by the United States Government shall in case of any emergency, or in time of war, have prior right, free of charge, to the use of any such structure; and

(i) Shall contain such further restrictions as the Secretary of War may see fit to impose therein. *Sec. 3, Act of June 11, 1906 (34 Stats., 235).*

1119d. No such authorization by the Secretary of War shall be granted to any person unless the applicant therefor shall first furnish to the Secretary of War satisfactory proof either that he (or it) is the owner or lessee of the approaches to the shore end of the proposed structure, with the right to use the same in connection therewith, or that he (or it) is the owner of a franchise granting the right to use said approaches in connection with such proposed structure. Every application to the Secretary of War for any such authorization shall be accompanied by plans and specifications for such structure, extension, or improvement, which said plans and specifications shall be submitted to, and approved by, the Chief of Engineers of the United States Army before the granting of any such authorization by the Secretary of War, and such plans and specifications shall not be deviated from in any such structure, extension, or improvement without the written consent, first obtained, of the said Chief of Engineers. *Sec. 4, Act of June 11, 1906 (34 Stats., 236).*

1119e. Nothing herein contained shall be so construed as to affect legal or equitable rights, if any, existing at the date of the approval of this Act which were acquired by the government of Porto Rico or any other party under any contract, lease or license, for the construction, extension, improvement, or maintenance of any such structure, granted by the United States authorities prior to the approval of this Act. *Sec. 5, Act of June 11, 1906 (34 Stats., 236).*

NIAGARA FALLS.

1150a. The diversion of water from Niagara River or its tributaries, in the State of New York, is hereby prohibited, except with the consent of the Secretary of War as hereinafter authorized in section two of this Act: *Provided*, That this prohibition shall not be interpreted as forbidding the diversion of the waters of the Great Lakes or of Niagara River for sanitary or domestic purposes, or for navigation, the amount of which may be fixed from time to time by the Congress of the United States or by the Secretary of War of the United States under its direction. *Sec. 1, Act of June 29, 1906 (34 Stats., 626).*

1150b. The Secretary of War is hereby authorized to grant permits for the diversion of water in the United States from said Niagara River or its tributaries for the creation of power to individuals, companies, or corporations which are now actually producing power from the waters of said river, or its tributaries, in the State of New York, or from the Erie Canal; also permits for the transmission of power from the Dominion of Canada into the United States, to companies legally authorized therefor, both for diversion and transmission, as hereinafter stated, but permits for diversion shall be issued only to the individuals, companies, or corporations as aforesaid, and only to the amount now actually in use or contracted to be used in factories the buildings for which are now in process of construction, not exceeding to any one individual, company or corporation as aforesaid a maximum amount of eight thousand six hundred cubic feet per second, and not exceeding to all individuals, companies or corporations as aforesaid an aggregate amount of fifteen thousand six hundred cubic feet per second; but no revocable permits shall be issued by the said Secretary under the provisions hereafter set forth for the diversion of additional amounts of water from the said river or its tributaries until the approximate amount for which permits may be issued as above, to wit, fifteen thousand six hundred cubic feet per second, shall for a period of not less than six months have been diverted from the waters of said river or its tributaries, in the State of New York: *Provided*, That the said Secretary, subject to the provisions of section five of this Act, under the limitations relating to time above set forth is hereby authorized to grant revocable permits, from time to time, to such individuals, companies, or corporations, or their assigns, for the diversion of additional amounts of water from the said river or its tributaries to such amount, if any, as, in conection with the amount diverted on the Canadian side, shall not injure or interfere with the navigable capacity of said river, or its integrity and proper volume as a boundary stream, or the scenic grandeur of Niagara Falls; and that the quantity of electrical power which may by permits be allowed to be transmitted from the Dominion of Canada into the United States, shall be one hundred and sixty thousand horsepower: *Provided further*, That the said Secretary, subject to the provisions of section five of this Act, may issue revocable permits for the transmission of additional electrical power so generated in Canada, but in no event shall the amount included in such permits, together with the said one hundred and sixty thousand horsepower and the amount generated and used in Canada, exceed three hundred and fifty thousand horsepower: *Provided always*, That the provisions herein permitting diversions and fixing the aggregate horespower herein permitted to be transmitted into the United States, as aforesaid, are intended as a limitation on the authority of the Secretary of War, and shall in no wise be construed as a direction to said Secretary to issue permits, and the Secretary of War shall make regulations preventing or limiting the diversion of water and the admission of electrical power as herein stated; and the permits for the transmission of electrical power issued by the Secretary of War may specify the persons, companies, or corporations by whom the same shall be transmitted, and the persons, companies, or corporations to whom the same shall be delivered. *Sec. 2, Act of June 29, 1906 (34 Stats., 626).*

1150c. Any person, company, or corporation diverting water from the said Niagara River or its tributaries, or transmitting electrical power into the United States from Canada, except as herein stated, or violating any of the provisions of this Act, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding two thousand five hundred dollars nor less than five hundred dollars, or by imprisonment (in the case of a natural person) not exceeding one year, or by both such punishments, in the discretion of the court. And, further, the removal of any structures or parts of structures erected in violation of this Act, or any construction incidental to or used for such diversion of water or transmission of power as is herein prohibited, as well as any diversion of water or transmission of power in violation hereof, may be enforced or enjoined at the suit of the United States by any circuit court having jurisdiction in any district in which the same may be located, and proper proceedings to this end may be instituted under the direction of the Attorney-General of the United States. *Sec. 3, Act of June 29, 1906 (34 Stats., 627).*

1150d. The provisions of this Act shall remain in force for three years from and after date of its passage, at the expiration of which time all permits granted hereunder by the Secretary of War shall terminate unless sooner revoked, and the Secretary of War is hereby authorized to revoke any or all permits granted by him by authority of this Act, and nothing herein contained shall be held to confirm, establish, or confer any rights heretofore claimed or exercised in the diversion of water or the transmission of power. *Sec. 5, Act of June 29, 1906 (34 Stats., 626).*

CHAPTER XXIII.

THE ORDNANCE DEPARTMENT—THE BOARD OF ORDNANCE AND FORTIFICATION, ARMS, ARMORIES, AND ARSENALS.

ORGANIZATION.

1151a. The Ordnance Department shall consist of one chief of ordnance with the rank of brigadier-general; six colonels, nine lieutenant-colonels, nineteen majors, twenty-five captains, twenty-five first lieutenants, and the enlisted men, including ordnance-sergeants, as now authorized by law. *Act of June 25, 1906 (34 Stats., 455).*

(This paragraph amends paragraph 1151.)

DETAILS.

1155a. Hereafter details for service to the grade of first lieutenant in the Ordnance Department under the provisions of the Act of February second, nineteen hundred and one, may be made, from the Army at large, from the grade of first or second lieutenant, and officers so detailed shall, while so serving, receive the pay of first lieutenant:

Provided, That no officer shall be so detailed except upon such examination as may be prescribed by the Secretary of War. *Act of March 2, 1903 (32 Stats., 942).*

(This paragraph amends paragraph 1155.)

1155b. Details to the Ordnance Department under the provisions of the Act of February second, nineteen hundred and one, may be made from the Army at large from the grade in which the vacancy exists, or from the grade below: *Provided*, That no officer shall be so detailed except upon the recommendation of a board of ordnance officers, and after at least one examination, which shall be open to competition: *And provided further*, That officers so detailed in grades below that of major shall not be again eligible for such detail until after they shall have served for at least one year out of that department. *Act of June 25, 1906 (34 Stats., 455).*

(This paragraph amends paragraphs 1155, 1155*a*, and 1156.)

MISCELLANEOUS REQUIREMENTS.

1161a. The services of skilled draftsmen and such other services, not clerical, as the Secretary of War may deem necessary, may be employed in the office of the Chief of Ordnance to carry into effect the various appropriations for the armament of fortifications, to be paid from such appropriations, in addition to the amount specifically appropriated for draftsmen in the Army Ordnance Bureau: *Provided*, That the entire expenditures for this purpose for the fiscal year ending June thirtieth, nineteen hundred and five, shall not exceed forty thousand dollars, and that the Secretary of War shall each year in the annual estimates report to Congress the number of persons so employed and the amount paid to each. *Act of March 18, 1904 (33 Stats., 115).*

PURCHASES.

1169a. Hereafter purchases of ordnance and ordnance stores and supplies and the procurement of services may be made by the Ordnance Department in open market, in the manner common among business men, when the aggregate of the amount required does not exceed two hundred dollars, but every such purchase exceeding one hundred dollars shall be immediately reported to the Secretary of War. *Act of April 23, 1904 (33 Stats., 275).*

(This paragraph amends paragraph 1169.)

SALES OF SERVICEABLE ORDNANCE AND ORDNANCE STORES.

1178a. Hereafter moneys arising from deductions made from carriers on account of the loss of or damage to military stores in transit shall be credited to the proper appropriation or funds out of which such or similar stores shall be replaced and individual pieces of United States armament which are not needed on account of historical value, and can be advantageously replaced, may be sold at a price not less than their cost price, when there exist for such sale sentimental reasons adequate in the judgment of the Secretary of War or Secretary of the Navy. *Act of March 2, 1905 (33 Stats., 840).*

(See paragraphs 1181a and 1640a.)

1181a. Hereafter all moneys arising from disposition authorized by law and regulation of serviceable ordnance and ordnance stores shall constitute one fund on the books of the Treasury Department, which shall be available to replace ordnance and ordnance stores throughout the fiscal year in which the disposition was effected and throughout the following year. The Secretary of War is hereby authorized to sell to American designers such serviceable ordnance and ordnance stores as may be necessary in the development of designs which may be used in the military service: *Provided*, That such ordnance and ordnance stores can be spared for the purpose, and funds arising from such sales shall be available to replace like ordnance and ordnance stores. *Act of April 23, 1904 (33 Stats., 276).*

AMMUNITION FOR MORNING AND EVENING GUN.

1184a. For firing the morning and evening gun at military posts prescribed by General Orders, Numbered Seventy, Headquarters of the Army, dated July twenty-third, eighteen hundred and sixty-seven, and at National Home for Disabled Volunteer Soldiers and its several branches, including National Soldiers' Home in Washington, District of Columbia, and at Soldiers and Sailors' State Homes, including material for cartridges, bags, reworking obsolete powder, and so forth, thirteen thousand five hundred dollars. *Act of April 23, 1904 (33 Stats., 275).*

(This paragraph amends paragraph 1184 by providing for "reworking obsolete powder.")

ARMS, ARMORIES, AND ARSENALS.

1192a. Hereafter all employees of the Ordnance Department whose rate of compensation is annual shall be paid monthly at the rate of one-twelfth of the annual rate, and of such monthly rate and of all other monthly rates of compensation one-thirtieth shall be the daily rate for computation of pay for fractional parts of a month; and for the purposes of this provision each and every month shall be held to consist of thirty days, whether the actual number of days be greater or less. *Act of April 23, 1904 (33 Stats., 276).*

(See paragraph 635a.)

MISCELLANEOUS PROVISIONS.

1201a. For the purpose of furnishing a national trophy and medals and other prizes to be provided and contested for annually, under such regulations as may be prescribed by the Secretary of War, said contest to be open to the Army, Navy, Marine Corps, and the National Guard or organized militia of the several States, Territories, and of the District of Columbia, and for the cost of the trophy, prizes, and medals herein provided for, the sum of two thousand five hundred dollars be, and the same is hereby, appropriated, out of any money in the Treasury not otherwise appropriated, to be expended for the purposes hereinbefore prescribed under the direction of the Secretary of War. *Act of April 28, 1904 (33 Stats., 580).*

(See General Orders, 61, H. A., 1903, and General Orders, 53, War Department, 1904.)

1201b. For the purpose of furnishing a national trophy and medals and other prizes to be provided and contested for annually, under such regulations as may be prescribed by the Secretary of War, said contest to be open to the Army, Navy, Marine Corps, and the National Guard or organized militia of the several States, Territories, and of the District of Columbia, and for the cost of the trophy, prizes, and medals herein provided for, and for the promotion of rifle practice, the sum of four thousand dollars be, and the same is hereby, appropriated, out of any money in the Treasury not otherwise appropriated, to be expended for the purposes hereinbefore prescribed under the direction of the Secretary of War. *Act of March 2, 1907 (34 Stats., 1175).*

(This paragraph amends paragraph 1201a, by providing for the "promotion of rifle practice.")

1201c. The Chief of Ordnance, in conducting manufacturing or similar operations, is authorized to charge any indirect or general expense for labor or material therefor against any of the appropriations authorizing these operations in such manner as is most economical and efficient, provided that the methods adopted shall show that each of such appropriations bears its ratable share of the total amount of these expenses. *Act of March 2, 1907 (34 Stats., 1062).*

THE BOARD OF ORDNANCE AND FORTIFICATIONS.

1215a. All material purchased under the foregoing provisions of this Act shall be of American manufacture, except in cases when, in the judgment of the Secretary of War, it is to the manifest interest of the United States to make purchases in limited quantities abroad, which material shall be admitted free of duty. *Act of April 21, 1904 (33 Stats., 237).*

(See paragraph 1542. Similar provisions were embodied in the "Act making appropriation for fortifications and other works of defense, etc.," approved June 6, 1902, and the Act making appropriation for the same purpose, approved March 3, 1903.)

CHAPTER XXIV.

THE SIGNAL CORPS.

ORGANIZATION.

1218a. There shall be added to the Signal Corps of the Army, as now authorized by law, one lieutenant-colonel, two majors, four captains, and four first lieutenants. *Act of March 2, 1903 (32 Stats., 932).*

(This paragraph increases the number of officers provided for in paragraph 1218.)

1219a. That the President be, and is hereby, authorized to appoint, by and with the advice and consent of the Senate, an officer of the Signal Corps as chief of the telegraph and cipher bureau of the Executive Office, who shall have, while so serving, the rank, pay, and allowances of a major. *Act of March 2, 1903 (32 Stats., 932).*

APPOINTMENTS, PROMOTIONS, DETAILS.

1222a. The vacancies thus created or caused shall be filled first by the promotion of officers of the Signal Corps, according to seniority, and thereafter by details from the line of the Army. *Act of March 2, 1903 (32 Stats., 932).*

(See paragraph 1218a.)

ENLISTED MEN.

1224a. Hereafter second-class privates of the Signal Corps shall be designated as privates, with the same pay and allowances as now allowed by law to second-class privates. Fifty first-class sergeants may be temporarily added to the Signal Corps for service in the Philippine Islands and Alaska; such additional force, or part thereof, to be continued only as long as in the opinion of the Secretary of War (or the President) it may be necessary for the efficiency of the Army. *Act of June 30, 1902 (32 Stats., 509).*

(This paragraph amends paragraph 1224.)

1224b. One hundred and thirty-two first-class sergeants, at five hundred and forty dollars each.

One hundred and forty-four sergeants, at four hundred and eight dollars each.

One hundred and fifty-six corporals, at two hundred and forty dollars each.

Five hundred and fifty-two first-class privates, at two hundred and four dollars each.

One hundred and sixty-eight privates, at one hundred and fifty-six dollars each.

Twenty-four cooks, at two hundred and forty dollars each.

Thirty-six master signal electricians, at nine hundred dollars each. The increase of enlisted men herein authorized shall take effect immediately. *Act of April 23, 1904 (33 Stats., 261).*

(This paragraph increases the enlisted strength of the Signal Corps. See paragraph 1224.)

SKILLED DRAFTSMEN, ETC.

1224c. The services of skilled draftsmen and such other services as the Secretary of War may deem necessary may be employed only in the Signal Office to carry into effect the various appropriations for fortifications and other works of defense, to be paid from such appropriations, in addition to the foregoing employees appropriated for in the Signal Office: *Provided*, That the entire expenditures for this purpose for the fiscal year ending June thirtieth, nineteen hundred and eight, shall not exceed twenty-five thousand dollars, and that the Secretary of War shall each year in the annual estimates report to Congress the number of persons so employed, their duties, and the amount paid to each. *Act of February 26, 1907 (34 Stats., 964).*

DUTIES.

1230a. Hereafter the purchase of signal stores and equipment, or the engagement of services not personal, by the Signal Corps of the Army, may be made by the Signal Corps of the Army in open market in the manner common among business men when the aggregate of the amount required does not exceed two hundred dollars, but every such purchase or employment shall be promptly reported to the Secretary of War. *Act of March 2, 1903 (32 Stats., 929).*

MILITARY TELEGRAPH LINES.

1233a. That of the receipts of the Washington-Alaska Military Cable and Telegraph System that have been covered into the Treasury of the United States, the sum of one hundred and ninety thousand dollars be, and the same is hereby, made available until expended for defraying the cost of such extensions and betterments of the system as may be approved by the Secretary of War, the extent of such extensions and the cost thereof to be reported to Congress by the Secretary of War: *Provided further*, That hereafter detailed estimates shall be submitted to Congress for any further extension of the cable or telegraph lines in the district of Alaska. *Act of March 2, 1907* (*34 Stats., 1159*).

CHAPTER XXV.

THE RECORD AND PENSION OFFICE.

RECORD AND PENSION OFFICE.

1239a. That the military rolls and records of the Indian wars or any other wars prior to the civil war, now preserved in the Interior or other Departments, be transferred to the War Department, to be preserved in the Record and Pension Office of that Department, and that they shall be properly indexed and arranged for use. *Joint Res. of April 28, 1904* (*33 Stats., 591*).

CHAPTER XXVI.

CHAPLAINS.

1258a. The President may, from time to time, select from among the chaplains of the Army any chaplains having not less than ten years' service, in the grade of captain, who shall have been commended as worthy of special distinction for exceptional efficiency by the regimental or district commanders with whose commands they may be serving as chaplains, approved through regular military channels, and may, with the advice and consent of the Senate, promote such regimental or artillery chaplains to be chaplains with the grade, pay, and allowances of major; every such promotion being made with a view to active service until the statutory age for the compulsory relinquishment thereof, except in cases of physical disability incurred in the line of duty: *Provided*, That the total number in active service so promoted shall not at any time exceed fifteen, and that the remaining chaplains shall have the grade, pay, and allowances of captain, mounted, after they shall have completed seven years of service: *And provided further*, That all persons who may hereafter be appointed as chaplains shall have the grade, pay, and allowances of first lieutenant, mounted, until they shall have completed seven years of service.

SEC. 2. That all officers provided for in this Act shall have a uniform designation in official address as chaplains of their respective regiments or of the Artillery Corps.

Sec. 3. That nothing in this Act shall be construed as depriving any chaplain of his commission in the Army, or as interfering with existing law pertaining to regimental and corps assignments or transfers, and that nothing herein contained shall be held or construed to increase the number of chaplains, as now authorized by law, or to reduce the grade of any now serving.

Sec. 4. That all laws and parts of laws inconsistent with the provisions of this Act be, and the same are hereby, repealed. *Act of April 21, 1904 (33 Stats., 226).*

(This paragraph amends paragraph 1258.)

1258b. In addition to the number of chaplains now authorized by law there shall hereafter be one for the Corps of Engineers. *Act of June 12, 1906 (34 Stats., 256).*

(This paragraph amends paragraph 1258*a*.)

1258c. In addition to the chaplains now authorized for the Artillery Corps the President is authorized to appoint, by and with the advice and consent of the Senate, and subject to the laws governing appointment of chaplains in the Army, one chaplain for each regiment of field artillery and two for the coast artillery, with the rank, pay, and allowances now authorized by law for chaplains in the Army. *Sec. 12, Act of January 25, 1907 (34 Stats., 864).*

(This paragraph amends paragraph 1258*a*.)

CHAPTER XXVII.

Commissioned Officers.

APPOINTMENTS.

1270a. Vacancies in the grade of second lieutenant shall be filled as now provided by law, except that no person shall be appointed from civil life before he shall have reached the age of twenty-one years, nor after he shall have reached the age of twenty-seven years, nor until he shall have passed a satisfactory examination as to his moral, physical, and educational qualifications. *Sec. 5. Act of March 2, 1899 (30 Stats., 979).*

LEAVES OF ABSENCE.

1287a. Officers appointed to the Regular Army from the volunteer service, whose service has been continuous, shall, in the computation of leaves of absence after their appointment in the Regular Army, be entitled to the leave credits which accrued to them as volunteer officers where such leave credits were not availed of during their volunteer service. *Act of June 30, 1902 (32 Stats., 508).*

(See paragraphs 826–828.)

DETAILS FROM THE RETIRED LIST.

1290a. Section twelve hundred and twenty-five of the Revised Statutes,[1] concerning the detail of officers of the Army and Navy to educational institutions, is hereby, amended so as to permit the President to detail under the provisions of that Act, and in addition to the detail of the officers of the Army and Navy now authorized to be detailed under the existing provisions of said Act, such retired officers and noncommissioned officers of the Army and Navy of the United States as in his judgment may be required for that purpose to act as instructors in military drill and tactics in schools in the United States and Territories where such instructions shall have been authorized by the educational authorities thereof, and where the services of such instructors shall have been applied for by said authorities. *Sec. 1, Act of April 21, 1904 (33 Stats., 225).*

(This paragraph amends paragraphs 1288–1290.)

1291a. No detail shall be made under this Act to any school unless it shall pay the cost of commutation of quarters of the retired officers or noncommisisoned officers detailed thereto and the extra-duty pay to which they may be entitled by law to receive for the performance of special duty: *Provided*, That no detail shall be made under the provisions of this Act unless the officers and noncommissioned officers to be detailed are willing to accept such position: *Provided further*, That they shall receive no compensation from the Government other than their retired pay. *Sec. 2, Act of April 21, 1904 (33 Stats., 225).*

(This paragraph takes the place of paragraph 1291.)

---

[1] SEC. 1225, R. S. The President may, upon the application of any established college or university within the United States, having capacity to educate, at the same time, not less than one hundred and fifty male students, detail an officer of the Army to act as president, superintendent, or professor thereof; but the number of officers so detailed shall not exceed (twenty) (thirty) at any time, and they shall be apportioned throughout the United States, as nearly as may be practicable, according to population. Officers so detailed shall be governed by general rules prescribed, from time to time, by the President. The Secretary of War is authorized to issue at his discretion and under proper regulations to be prescribed by him, out of any small arms or pieces of field artillery belonging to the Government and which can be spared for that purpose, such number of the same as may appear to be required for military instruction and practice, by the students of any college or university under the provisions of this section; and the Secretary shall require a bond in each case, in double the value of the property, for the care and safe-keeping thereof, and for the return of the same when required.

ISSUES OF ORDNANCE AND ORDNANCE STORES.

1292a. The Secretary of War is authorized to issue at his discretion, and under proper regulations to be prescribed by him, out of ordnance and ordnance stores belonging to the Government, and which can be spared for that purpose, upon the approval of the governors of the respective States and Territories, such number of the same as may be required for military instruction and practice by such school, and the Secretary shall require a bond in each case, for double the value of the property, for the care and safe-keeping thereof and for the return of the same when required. *Sec. 3, Act of April 21, 1904 (33 Stats., 226).*

(This paragraph takes the place of paragraph 1292.)

1292b. The Secretary of War is hereby authorized to issue, at his discretion and under proper regulations to be prescribed by him, without cost of transportation to the United States, such obsolete ordnance and ordnance stores as may be available to State and Territorial educational institutions and to State soldiers and sailors orphans' homes, for purposes of drill and instruction.

And the Secretary of War shall require from such institutions or homes a bond in each case in double the value of the property issued, for the care and safe-keeping thereof and for the return of the same to the United States when required: *Provided*, That the issues herein provided for shall be made only to institutions upon recommendation of the governors of States and Territories and shall not be made in any case to any educational institution to which issues of such stores are allowed to be made under provisions of existing law. *Act of June 30, 1906 (34 Stats., 817).*

(See paragraphs 1182, 1183, 1292, and 1292a.)

RETIREMENT OF OFFICERS.

1299a. Hereafter no officer holding a rank above that of colonel shall be retired except for disability or on account of having reached the age of sixty-four years until he shall have served at least one year in such rank. *Act of June 12, 1906 (34 Stats., 245).*

(This paragraph amends paragraph 1299.)

RETIREMENT OF OFFICERS.

1303a. Any officer of the Army below the grade of brigadier-general who served with credit as an officer or as an enlisted man in the regular or volunteer forces during the civil war prior to April ninth, eighteen hundred and sixty-five, otherwise than as a cadet, and whose name is borne on the official register of the Army, and who has heretofore been, or may hereafter be, retired on account of wounds or disability incident to the service, or on account of age or after forty years' service, may, in the discretion of the President, by and with the advice and consent of the Senate, be placed on the retired list of the Army with the rank and retired pay of one grade above that actually held by him at the time of retirement: *Provided*, That this Act shall not apply to any officer who received an advance of grade since the date of his retirement or who has been restored to the Army and placed on the retired list by virtue of the provisions of a special Act of Congress; and the Secretary of War may assign retired officers of the Army, with their consent, to active duty in recruiting, for service in connection with the organized militia in the several States and Territories upon the request of the governor thereof, as military attachés, upon courts-martial, courts of inquiry and boards, and to staff duties not involving service with troops; and such officers while so assigned shall receive the full pay and allowances of their respective grades. *Act of April 23, 1904* (*33 Stats., 264*).

1303b. A colonel or lieutenant-colonel heretofore or hereafter assigned to active duty shall hereafter receive the same pay and allowances as a retired major would receive under a like assignment. *Act of June 12, 1906* (*34 Stats., 245*).

1303c. Officers who served creditably in the regular or volunteer forces during the civil war prior to April ninth, eighteen hundred and sixty-five, and who now hold the rank of brigadier-general on the active list of the Army, having previously held that rank for three years or more, shall, when retired from active service, have the rank and retired pay of major-general. *Act of March 2, 1907* (*34 Stats., 1163*).

MISCELLANEOUS PROVISIONS.

1323a. In addition to the detail of retired officers now authorized by law, it shall hereafter be lawful for the Secretary of War to detail, whenever in his judgment the public interests require it, not exceeding twenty retired officers for service in connection with the organized militia in the States or Territories, upon the request of the governor thereof, and such retired officers shall be entitled, while so employed, to receive the full pay and allowances of their respective grades. *Act of March 2, 1903* (*32 Stats., 932*).

MISCELLANEOUS PROVISIONS RESPECTING COMMISSIONED OFFICERS.

1332a. Officers of the Army of the United States may be detailed for service as chief and assistant chiefs, the said assistant chiefs not to exceed in number four, of the Philippine constabulary, and that during the continuance of such details the officer serving as chief shall have the rank, pay, and allowances of brigadier-general, and the officers serving as assistant chiefs shall have the rank, pay, and allowances of colonel: *Provided*, That the difference between the pay and allowances of brigadier-general and colonel, as herein provided, and the pay and allowances of the officers so detailed in the grades from which they are detailed shall pe paid out of the Philippine treasury. *Sec. 1, Act of January 30, 1903 (32 Stats., 783).*

CHAPTER XXVIII.

BREVETS—MEDALS OF HONOR—CERTIFICATES OF MERIT—FOREIGN DECORATIONS.

MEDALS OF HONOR.

1356a. For three thousand medals of honor to be prepared, with suitable emblematic devices, upon the design of the medal of honor heretofore issued, or upon an improved design, together with appropriate rosettes or other insignia to be worn in lieu of the medal, and to be presented by direction of the President, and in the name of Congress, to such officers, noncommissioned officers, and privates as have most distinguished, or may hereafter most distinguish, themselves by their gallantry in action, twelve thousand dollars: *Provided*, That the Secretary of War be, and he is hereby, authorized and directed to use so many of the medals and rosettes or other insignia provided for by this Act as may be necessary to replace the medals that have been issued under the joint resolution of Congress approved July twelfth, eighteen hundred and sixty-two, and section six of the Act of Congress approved March third, eighteen hundred and sixty-three: *And provided further*, That whenever it shall appear from official records in the War Department that any officer or enlisted man of the Army so distinguished himself in action as to entitle him to the award of the Congressional medal of honor under the provisions of the sixth section of the Act of Congress approved March third, eighteen hundred and sixty-three, entitled "An Act making appropriations for the sundry civil expenses of the Government for the year ending June thirtieth, eighteen hundred and sixty-four, and for the year ending the thirtieth of June, eighteen hundred and sixty-three, and for other purposes," the fact that the person who so distinguished himself has since become separated from the military service, or that the award of the medal to him was not specifically recommended or applied for while he was in the said service, shall not be held to prevent the award and presentation of the medal to such person under the provisions of the law hereinbefore cited. *Act of April 23, 1904 (33 Stats., 274).*

(See paragraphs 1356 and 1357.)

1356b. That in any case where the President of the United States has heretofore, under any Act or resolution of Congress, caused any medal to be made and presented to any officer or person in the United States on account of distinguished or meritorious services, on a proper showing made by such person to the satisfaction of the President that such medal has been lost or destroyed through no fault of the beneficiary, and that diligent search has been made therefor, the President is hereby authorized to cause to be prepared and delivered to such person a duplicate of such medal, the cost of which shall be paid out of any money in the Treasury not otherwise appropriated. *Joint Res. of April 15, 1904 (33 Stats., 588).*

(See paragraph 1357.)

1356c. The holders of medals of honor under the Act approved July twelfth, eighteen hundred and sixty-two, and section six of the Act approved March third, eighteen hundred and sixty-three, shall not be required to surrender such medals in case such medals are replaced, in pursuance of the provisions of the Act of Congress approved April twenty-third, nineteen hundred and four; and that wherever the holders of such medals of honor have surrendered them, in order to receive the medals provided for by said Act approved April twenty-third, nineteen hundred and four, such medals shall be returned to them: *Provided*, That no recipient of both medals shall wear both medals at the same time. *Joint Res., February 27, 1907 (34 Stats., 1422).*

(This paragraph amends paragraph 1356a.)

CORPS BADGES AND INSIGNIA OF SOCIETIES.

1362a. The distinctive badge adopted by the Army and Navy Union of the United States may be worn, in their own right, upon all public occasions of ceremony by officers and enlisted men of the Army and Navy of the United States who are members of said organization. *Joint Res., March 2, 1907 (34 Stats., 1423).*

1363a. The distinctive badges adopted by military societies of men who served in the armies and navies of the United States during the Chinese relief expedition of nineteen hundred may be worn upon all occasions of ceremony by officers and men of the Army and Navy of the United States who are members of said organization in their own right. *Joint Res., January 12, 1903 (32 Stats., 1229).*

1363b. Whoever, in the District of Columbia, not being a member of the Military Order of the Loyal Legion of the United States, of the Grand Army of the Republic, of the Sons of Veterans, of the Woman's Relief Corps, of the Union Veteran's Union, of the Union Veteran Legion, of the United Spanish War Veterans, of the National Society of the Daughters of the American Revolution, and not entitled under the rules of the order to wear the same, willfully wears or uses the insignia, distinctive ribbon, or badge of membership, rosette, or button thereof, or who uses or wears the same to obtain aid or assistance thereby, shall be punished by a fine of not more than twenty dollars or by imprisonment for not more than thirty days, or by both such fine and imprisonment. *Act of March 15, 1906 (34 Stats., 62).*

CHAPTER XXIX.

ENLISTED MEN.

RETIREMENT OF ENLISTED MEN.

1379a. When an enlisted man shall have served thirty years either in the Army, Navy, or Marine Corps, or in all, he shall, upon making application to the President, be placed upon the retired list, with seventy-five per centum of the pay and allowances he may then be in receipt of, and that said allowances shall be as follows: Nine dollars and fifty cents per month in lieu of rations and clothing and six dollars and twenty-five cents per month in lieu of quarters, fuel, and light: *Provided*, That in computing the necessary thirty years' time all service in the Army, Navy, and Marine Corps shall be credited.

SEC. 2. That all Acts and parts of Acts, so far as they conflict with the provisions of this Act, are hereby repealed. *Secs. 1 and 2, Act of March 2, 1907 (34 Stats., 1217).*

(This paragraph takes the place of paragraph 1379. See paragraphs 869a, and 1381a.)

1381a. Hereafter in computing the length of service for retirement, credit shall be given soldiers for double the time of their actual service in China, Cuba, the Philippine Islands, the Island of Guam, Alaska, and Panama; but double credit shall not be given for service hereafter rendered in Porto Rico or the Territory of Hawaii. *Act of April 23, 1904 (33 Stats., 264).*

(This paragraph takes the place of paragraph 1381. See paragraphs 869 and 869a.)

DUPLICATE CERTIFICATES OF DISCHARGE.

1388a. Whenever satisfactory proof shall be furnished to the War Department that any officer or enlisted man who has been or shall hereafter be honorably discharged from the military service of the United States has lost his certificate of discharge, or the same has been destroyed without his privity or procurement, the Secretary of War shall be authorized to furnish to such officer or enlisted man, or to the widow of such officer or enlisted man, a certificate of such discharge, to be indelibly marked, so that it may be known as a certificate in lieu of a lost or destroyed discharge: *Provided*, That such certificate shall not be accepted as a voucher for the payment of any claim against the United States for pay, bounty, or other allowance, or as evidence in any other case. *Act of July 1, 1902* (*32 Stats.*, *629*).

(This paragraph virtually takes the place of sec. 224 of R. S.; paragraph 1388.)

APPREHENSION OF DESERTERS—REWARDS.

1409a. For the apprehension, securing, and delivering of deserters, including escaped military prisoners, and the expenses incident to their pursuit; and no greater sum than fifty dollars for each deserter or escaped military prisoner shall, in the discretion of the Secretary of War, be paid to any civil officer or citizen for such services and expenses. *Act of April 23, 1904* (*33 Stats.*, *269*).

(This paragraph takes the place of paragraph 1409.)

DECEASED SOLDIERS.

1415a. Hereafter, in the settlement of the accounts of deceased officers or enlisted men of the Army, where the amount due the decedent's estate is less than five hundred dollars and no demand is presented by a duly appointed legal representative of the estate, the accounting officers may allow the amount found due to the decedent's widow or legal heirs in the following order of precedence: First, to the widow; second, if decedent left no widow, or the widow be dead at time of settlement, then to the children or their issue, per stirpes; third, if no widow or descendants, then to the father and mother in equal parts, provided the father has not abandoned the support of his family, in which case to the mother alone; fourth, if either the father or mother be dead then to the one surviving; fifth, if there be no widow, child, father, or mother at the date of settlement, then to the brothers and sisters and children of deceased brothers and sisters, per stirpes: *Provided*, That this Act shall not be so construed as to prevent payment from the amount due the decedent's estate of funeral expenses, provided a claim therefor is presented by the person or persons who actually paid the same before settlement by the accounting officers. *Act of June 30, 1906* (*34 Stats.*, *750*).

EXPENSES OF TRANSPORTATION AND BURIAL.

1416a. To enable the Secretary of War, in his discretion, to cause to be transported to their homes the remains of officers and soldiers who die at military camps or who are killed in action or who die in the field or hospital in Alaska and at places outside of the limits of the United States, or who die while on voyage at sea, forty thousand dollars. *Act of April 28, 1904 (33 Stats., 496).*

(This paragraph takes the place of paragraph 1416.)

1417a. [For] expenses of the interment of officers killed in action or who die when on duty in the field, or at military posts or on the frontiers, or when traveling under orders, and of noncommissioned officers and soldiers; and in all cases where such expenses would have been lawful claims against the Government reimbursement may be made of expenses heretofore or hereafter incurred by individuals of burial and transportation of remains of officers, including acting assistant surgeons, not to exceed the amount now allowed in the cases of officers, and for the reimbursement in the cases of enlisted men not exceeding the amount now allowed in their cases, may be paid out of the proper funds appropriated by this Act, and the disbursing officers shall be credited with such reimbursement heretofore made; but hereafter no reimbursement shall be made of such expenses incurred prior to the twenty-first day of April, eighteen hundred and ninety-eight. *Act of April 23, 1904 (33 Stats., 269).*

(See paragraph 1417.)

1418a. To enable the Secretary of War, in his discretion, to cause to be transported to their homes the remains of civilian employees of the Army who have died, or may hereafter die, while in the employ of the War Department in Cuba, Porto Rico, Hawaii, China, Alaska, and the Philippines, including the remains of any honorably discharged soldiers who are entitled under the terms of their discharge to return transportation on Goverment transport, and who die while on said transport, five thousand dollars. *Act of April 28, 1904 (33 Stats., 496).*

(This paragraph takes the place of paragraph 1418.)

CHAPTER XXX.

THE TROOPS OF THE LINE.

CAVALRY.

1424a. Each cavalry band shall consist of one chief musician; one chief trumpeter; one principal musician; one drum major, who shall have the rank, pay, and allowances of a first sergeant; four sergeants; eight corporals; one cook, and eleven privates. *Sec. 2, act of March 2, 1899 (30 Stats., 977).*

(This paragraph takes the place of paragraph 1424, which is defective.)

THE ARTILLERY CORPS.

1443a. One hundred electrician sergeants, to be assigned for duty at such places as the Secretary of War may direct, at four hundred and eight dollars each, * * * : *Provided*, That there shall be added to the Artillery Corps twenty-five master electricians, to be enlisted by the Secretary of War, after such examination as he may prescribe, who shall receive seventy-five dollars per month and the allowance of an ordnance sergeant. *Act of March 2, 1903* (*32 Stats., 930*).

(This paragraph takes the place of paragraph 1443.)

1443b. The artillery of the United States Army shall consist of the Chief of Artillery, the coast artillery, and the field artillery. The coast artillery and the field artillery shall be organized as hereinafter specified, and the artillery shall belong to the line of the Army: *Provided*, That on and after July first, nineteen hundred and eight, the Chief of Artillery shall cease to exercise supervision over the field artillery and shall thereafter be designated as the Chief of Coast Artillery. *Sec. 1, Act of January 25, 1907* (*34 Stats., 861*).

(This paragraph and the following paragraphs take the place of all previous paragraphs referring to the organization of the artillery.)

1443c. On and after the approval of this Act the coast artillery and the field artillery shall be permanently separated, the separation to be effected as follows:

All officers in the present Artillery Corps shall remain on one list as regards promotion until sufficient promotions shall have been made as far as the present number of officers permit, to provide in each grade, together with the officers remaining therein, the total number of officers of the grade provided for in this Act for the coast and field artillery combined. After such promotion they shall, in each grade, be assigned by the President to the coast artillery or to the field artillery, according to special aptitude and qualifications and agreeably to individual preference, so far as may be practicable and for the good of the service, such assignments to be permanent; and all officers promoted or appointed in the artillery thereafter shall be commissioned as officers of the coast artillery or the field artillery, as the case may be, and shall be promoted by seniority in their own branch, subject to the provisions of the laws governing promotion in the Army at large. *Sec. 9, Act of January 25, 1907* (*34 Stats., 863*).

1443d. All vacancies created or caused by this Act which can be filled by promotion of officers now in the Artillery Corps shall be filled by promotion according to seniority, subject to examination as now prescribed by law. Of the vacancies created or caused by this Act which can not be filled by promotion of officers now in the Artillery Corps, one-fifth in each branch shall be filled in each fiscal year until the total number of officers herein provided for shall have been attained. The vacancies remaining in the grade of second lieutenant shall be filled by appointment in the following order: First, of graduates of the United States Military Academy; second, of enlisted men whose fitness for advancement shall have been determined by competitive examination; third, of candidates from civil life; and all such appointments shall be made in accordance with the provisions of existing law. *Sec. 10, Act of January 25, 1907 (34 Stats., 863).*

1443e. The regimental and battalion noncommissioned staff officers herein authorized for regiments of field artillery shall have the pay and allowances of corresponding grades in the cavalry; the battalion quartermaster-sergeant shall have the pay and allowances of sergeant-major, junior grade, of the Artillery Corps; the chief mechanic the pay and allowances of sergeant, and the mechanics of field artillery the pay and allowances of artificers of field artillery; engineer, sixty-five dollars a month and allowances of ordnance-sergeant; electrician-sergeant, first class, forty-five dollars a month and allowances of ordnance-sergeant; electrician-sergeant, second class, thirty-five dollars a month and allowances of ordnance-sergeant; master gunner, the pay and allowances of ordnance-sergeant; fireman, thirty dollars a month and allowances of ordnance-sergeant; and that the rates of pay of all other enlisted men of the coast and the field artillery shall be as now provided by law: *Provided*, That casemate electricians, observers, first class, and plotters shall receive nine dollars a month in addition to their pay; that chief planters, chief loaders, observers, second class, gun commanders, and gun pointers shall receive seven dollars a month in addition to their pay, and that first-class gunners shall receive two dollars a month and second-class gunners one dollar a month in addition to their pay: *Provided further*, That the number of casemate electricians shall not exceed forty-four; that the number of observers, first class, shall not exceed one hundred and seventy; that the number of plotters shall not exceed one hundred and seventy; that the number of chief planters shall not exceed forty-four; that the number of chief loaders shall not exceed forty-four; that the number of observers, second class, shall not exceed one hundred and seventy; that the number of gun commanders shall not exceed three hundred and seventy-eight, and that the number of gun pointers shall not exceed three hundred and seventy-eight: *And provided further*, That no enlisted man shall receive under this section more than one addition to his pay. *Sec. 11, Act of January 25, 1907 (34 Stats., 863).*

THE COAST ARTILLERY CORPS.

1443f. The coast artillery is the artillery charged with the care and use of the fixed and movable elements of land and coast fortifications, including the submarine mine and torpedo defenses. *Sec. 3, Act of January 25, 1907 (34 Stats., 861).*

1443g. The coast artillery shall constitute a corps, and shall consist of one Chief of Coast Artillery with the rank, pay, and allowances of a brigadier-general, as provided in section one of this Act; fourteen colonels; fourteen lieutenant-colonels; forty-two majors; two hundred and ten captains; two hundred and ten first lieutenants, and two hundred and ten second lieutenants; and the captains and lieutenants provided for in this section not required for duty with companies shall be available for duty as staff officers of the various coast artillery commands and for such other details as may be authorized by law and regulations; twenty-one sergeants-major with the rank, pay, and allowances of regimental sergeants-major of infantry; twenty-six master electricians; sixty engineers; seventy-four electrician-sergeants, first class; seventy-four electrician-sergeants, second class; forty-two sergeants-major with the rank, pay, and allowances of battalion sergeants-major of infantry; forty-two master gunners; sixty firemen; one hundred and seventy companies, and fourteen bands, organized as now provided for by law for artillery corps bands. *Sec. 5, Act of January 25, 1907 (34 Stats., 861).*

1443h. Each company of coast artillery shall consist of one captain, one first lieutenant, one second lieutenant, one first sergeant, one quartermaster-sergeant, two cooks, two mechanics, two musicians, and such number of sergeants, corporals, and privates as may be fixed by the President in accordance with the requirements of the service to which it may be assigned: *Provided*, That the total number of sergeants and corporals in the coast artillery, so fixed, shall not exceed one thousand three hundred and sixty and two thousand and forty, respectively, and that the total enlisted strength of the coast artillery, as provided under this Act, shall not exceed nineteen thousand one hundred and forty-seven, exclusive of master electricians, electrician-sergeants, first class, and electrician-sergeants, second class. *Sec. 6, Act of January 25, 1907 (34 Stats., 862).*

THE FIELD ARTILLERY.

1443i. The field artillery is the artillery which accompanies an army in the field, and includes light artillery, horse artillery, siege artillery, and mountain artillery. *Sec. 4, Act of January 25, 1907 (34 Stats., 861).*

1443j. The field artillery shall consist of six regiments, each organized as follows: One colonel, one lieutenant-colonel, two majors, eleven captains, thirteen first lieutenants, and thirteen second lieutenants; two veterinarians, one sergeant-major, one quartermaster-sergeant, one commissary-sergeant, two battalion sergeants-major, two battalion quartermaster-sergeants, two color-sergeants, one band, and six batteries organized into two battalions of three batteries each. Of the officers herein provided the captains and lieutenants not required for duty with batteries shall be available for detail as regimental and battalion staff officers, and for such other details as may be authorized by law and regulations. Battalion adjutants shall be detailed from the captains, and battalion quartermasters and commissaries from lieutenants. Each field artillery band shall be organized as provided by law for cavalry bands: *Provided*, That the President in his discretion may increase by nine mounted orderlies the regimental strength herein authorized. *Sec. 7, Act of January 25, 1907* (*34 Stats., 862*).

1443k. Each battery of field artillery shall consist of one captain, two first lieutenants, two second lieutenants, one first sergeant, one quartermaster-sergeant, one stable sergeant, one chief mechanic, six sergeants, twelve corporals, four mechanics, three cooks, two musicians, and one hundred and two privates, the commisioned officers to be assigned from among those hereinbefore authorized for the regiment: *Provided*, That the President in his discretion may increase the number of sergeants in any battery of field artillery to eight, the number of corporals to sixteen, the number of mechanics to seven, the number of musicians to three, and the number of privates to one hundred and forty-nine: *Provided further*, That nothing contained in this Act shall increase the total number of enlisted men in the line of the Army, together with the native scouts, as authorized by section thirty-six of the Act of Congress approved February second, nineteen hundred and one, entitled "An Act to increase the efficiency of the permanent military establishment of the United States."' *Sec. 8, Act of January 25, 1907* (*34 Stats.. 862*).

CHAPTER XXXI.

THE UNITED STATES MILITARY ACADEMY—THE ARMY WAR COLLEGE—THE SERVICE SCHOOLS.

THE MILITARY ACADEMY.

ORGANIZATION: ACADEMIC AND MILITARY STAFF.

1458a. For pay of one associate professor of modern languages, in addition to pay as captain, five hundred dollars. *Act of April 28, 1904* (*33 Stats., 442*).

(The above appropriation act amends paragraph 1458, by the creation of an additional office.)

1458b. For one civilian instructor of French, to be employed under rules prescribed by the Secretary of War, two thousand dollars;

For two civilian instructors in Spanish, at two thousand dollars per year each, to be employed under rules prescribed by the Secretary of War, four thousand dollars. *Act of April 28, 1904* (*33 Stats., 445*).

(The above appropriation act amends paragraph 1458 by the creation of two additional offices.)

1458c. For pay of one professor of ordnance and science of gunnery (lieutenant-colonel), in addition to pay as major: *Provided*, That the position shall be filled by the detail of an officer of the Army, who, while so serving, shall have the title and status of other professors, * * * five hundred dollars. *Act of March 2, 1907* (*34 Stats., 1063*).

(The above paragraph amends paragraphs 1458 and 1471.)

THE ACADEMIC STAFF.

1471a. The professors and the associate professor of the United States Military Academy shall have the actual rank in the United States Army now assigned to them by assimilation in the regulations of the Military Academy prescribed by the President of the United States, and that they shall exercise command only in the academic department of the United States Military Academy. *Act of June 28, 1902* (*32 Stats., 409*).

(See note to paragraph 1495.)

CORPS OF CADETS.

1479a. The number of cadets authorized to be appointed by the President from the United States at large shall not at any one time exceed forty. *Act of June 28, 1902* (*32 Stats., 410*).

(This paragraph amends paragraph 1479.)

1480a. Hereafter the actual and necessary traveling expenses of candidates while proceeding from their homes to the Military Academy for qualification as cadets shall, if admitted, be credited to their accounts and paid after admission from the appropriation for the transportation of the Army and its supplies. *Act of June 28, 1902* (*32 Stats., 409*).

(This paragraph amends paragraph 1480.)

1480b. Cadets appointed to the Military Academy at West Point, New York, for admission after the year nineteen hundred and seven, may be admitted on the first day of March in place of the first day of June. *Act of March 2, 1907* (*34 Stats., 1063*).

PAY AND ALLOWANCES.

1485a. Hereafter the pay of cadets shall be fixed at five hundred dollars per annum and one ration per day, or commutation therefor, such commutation to be thirty cents per day, to be paid from the appropriation for the subsistence of the Army. *Act of June 28, 1902 (32 Stats., 409).*

(This paragraph amends paragraph 1485.)

THE MILITARY ACADEMY BAND.

1508a. The Military Academy band shall hereafter consist of one teacher of music, who shall be the leader of the band, one enlisted band sergeant and assistant leader, and of forty enlisted musicians. The teacher of music shall receive the pay of a second lieutenant, not mounted; the enlisted band sergeant and assistant leader shall receive six hundred dollars per year; and of the enlisted musicians of the band, twelve shall each receive thirty-four dollars per month, twelve shall each receive twenty-five dollars per month, and the remaining sixteen shall each receive seventeen dollars per month, and each of the aforesaid enlisted men shall also be entitled to the clothing, fuel, rations, and other allowances of musicians of cavalry; and the said teacher of music, the band sergeant and assistant leader, and the enlisted musicians of the band shall be entitled to the same benefits in respect to pay, emoluments, and retirement arising from longevity, reenlistment, and length of service as are, or may hereafter become, applicable to other officers or enlisted men of the Army. *Act of March 3, 1905 (33 Stats., 853).*

(This paragraph amends section 1111 of the Revised Statutes and takes the place of paragraph 1508.)

GENERAL ARMY SERVICE MEN, QUARTERMASTER'S DEPARTMENT.

1510a. Hereafter no part of the moneys appropriated for use of the Quartermaster's Department shall be used in payment of extra duty pay for the Army service men in the Quartermaster's Department at West Point. *Act of March 2, 1907 (34 Stats., 1167).*

ARMY WAR COLLEGE.

1514a. The Secretary of War is hereby authorized to expend the sum of four hundred thousand dollars, or so much thereof as may be necessary, from the unexpended balance of an emergency fund appropriated in the Act approved March third, eighteen hundred and ninety-nine, for the erection of the necessary buildings for the Army War College, established at Washington Barracks, District of Columbia, for the instruction of officers of the Army and militia of the United States. *Act of June 30, 1902 (32 Stats., 512).*

(See paragraph 1514 and General Orders, 155, H. A. 1901.)

UNITED STATES ENGINEER SCHOOL.

1515a. The Secretary of War is hereby authorized to expend the sum of five hundred thousand dollars, or so much thereof as may be necessary, from the unexpected balance of the appropriation for barracks and quarters for the fiscal year ending June thirtieth, nineteen hundred, which sum is hereby reappropriated for the construction of the necessary buildings for the Engineer School at Washington Barracks, District of Columbia. *Act of June 30, 1902, (32 Stats., 519).*

(See General Orders, 155, H. A. 1901.)

1515b. For equipment and maintenance of the United States Engineer School at Washington Barracks, District of Columbia, including purchase of instruments, implements, and materials, for the use of the school and for instruction of engineer troops in their special duties as sappers and miners; for land and submarine mines, pontoniers, torpedo drill, and signaling; for purchase and binding of professional works of recent date treating of military and civil engineering and kindred scientific subjects, for the library of the United States Engineer School. *Act of June 30, 1902 (32 Stats., 519).*

(This paragraph takes the place of paragraph 1515. See General Orders, 155, H. A. 1901.)

UNITED STATES SERVICE SCHOOLS.

1519a. To provide means for the theoretical and practical instruction at the Artillery School, at Fort Monroe, Virginia; the School of Submarine Defense, at Fort Totten, New York; the General Service and Staff College, at Fort Leavenworth, Kansas, and the School of Application for Cavalry and Field Artillery, at Fort Riley, Kansas, by the purchase of text-books, books of reference, scientific and professional papers, the purchase of modern instruments and material for theoretical and practical instruction, and for all other absolutely necessary expenses, to be allotted in such proportions as may, in the opinion of the Secretary of War, be for the best interest of the military service, twenty-five thousand dollars. *Act of April 23, 1904 (33 Stats., 259).*

(See General Orders, 155, H. A. 1901.)

CHAPTER XXXII.

CONTRACTS AND PURCHASES.

MISCELLANEOUS REQUIREMENTS.

1543a. Hereafter the purchase of supplies and the procurement of services for all branches of the Army service may be made in open market, in the manner common among business men, when the aggregate of the amount required does not exceed five hundred dollars; but every such purchase exceeding one hundred dollars shall be promptly reported to the Secretary of War for approval, under such regulations as he may prescribe. *Act of June 12, 1906 (34 Stats., 258).*

(This paragraph makes general to "all branches of the army service" the authority to purchase supplies and procure services in open market, and increases the amount that may be thus expended to "five hundred dollars.")

PENAL OFFENSES.

1566a. Every officer, clerk, agent, or employee of the United States, and every person representing himself to be or assuming to act as such officer, clerk, agent, or employee, who is guilty of extortion, under color of his office, clerkship, agency, or employment, or under color of his pretended or assumed office, clerkship, agency, or employment, and every person who shall attempt any act which if performed would make him guilty of such extortion, shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than one year, or by both such fine and imprisonment, except those officers or agents of the United States otherwise differently and specially provided for in the subsequent sections of this chapter. *Act of June 28, 1906 (34 Stats., 546).*

(This paragraph amends section 5481 of the Revised Statutes and takes the place of paragraph 1566. It has reference to Title 70, Chapter 6, R. S.)

THE EIGHT-HOUR LAW.

1573a. The provisions of the Act entitled "An Act relating to the limitations of the hours of daily service of laborers and mechanics employed upon the public works of the United States and of the District of Columbia," approved August first, eighteen hundred and ninety-two, shall not apply to alien laborers employed in the construction of the Isthmian Canal within the Canal Zone. *Act of February 27, 1906 (34 Stats., 33).*

(This paragraph amends paragraph 1573.)

1573b. The provisions of an Act entitled "An Act relating to the limitations of the hours of daily service of laborers and mechanics employed upon the public works of the United States and of the District of Columbia," approved August first, eighteen hundred and ninety-two, and of an Act entitled "An Act making appropriations to supply urgent deficiencies in the appropriations for the fiscal year ending June thirtieth, nineteen hundred and six, and for prior years, and for other purposes," approved February twenty-seventh, nineteen hundred and six, shall not apply to unskilled alien laborers and to the foremen and superintendents of such laborers employed in the construction of the isthmian canal within the Canal Zone. *Sec. 4, Act of June 30, 1906 (34 Stats., 669).*

(The above paragraph amends paragraphs 1573 and 1573a.)

BONDS TO SECURE PAYMENT FOR LABOR AND MATERIALS.

1576a. Hereafter any person or persons entering into a formal contract with the United States for the construction of any public building, or the prosecution and completion of any public work, or for repairs upon any public building or public work, shall be required, before commencing such work, to execute the usual penal bond, with good and sufficient sureties, with the additional obligation that such contractor or contractors shall promptly make payments to all persons supplying him or them with labor and materials in the prosecution of the work provided for in such contract; and any person, company, or corporation who has furnished labor or materials used in the construction or repair of any public building or public work, and payment for which has not been made, shall have the right to intervene and be made a party to any action instituted by the United States on the bond of the contractor, and to have their rights and claims adjudicated in such action and judgment rendered thereon, subject, however, to the priority of the claim and judgment of the United States. If the full amount of the liability of the surety on said bond is insufficient to pay the full amount of said claims and demands, then, after paying the full amount due the United States, the remainder shall be distributed pro rata among said interveners. If no suit should be brought by the United States within six months from the completion and final settlement of said contract, then the person or persons supplying the contractor with labor and materials shall, upon application therefor, and furnishing affidavit to the Department under the direction of which said work has been prosecuted that labor or materials for the prosecution of such work has been supplied by him or them, and payment for which has not been made, be furnished with a certified copy of said contract and bond, upon which he or they shall have a right of action, and shall be, and are hereby, authorized to bring suit in the name of the United States in the circuit court of the United States in the district in which said contract was to be performed and executed, irrespective of the amount in controversy in such suit, and not elsewhere, for his or their use and benefit, against said contractor and his sureties, and to prosecute the same to final judgment and execution: *Provided*, That where suit is instituted by any of such creditors on the bond of the contractor it shall not be commenced until after the complete performance of said contract and final settlement thereof, and shall be commenced within one year after the performance and final settlement of said contract, and not later: *And provided further*, That where suit is so instituted by a creditor or by creditors, only one action shall be brought, and any creditor may file his claim in such action and be made party thereto within one year from the completion of the work under said contract, and not later. If the recovery on the bond should be inadequate to pay the amounts found due to all of said creditors, judgment shall be given to each creditor pro rata of the amount of the recovery. The surety on said bond may pay into court, for distribution among said claimants and creditors, the full amount of the sureties' liability, to wit, the penalty named in the bond, less any amount which said surety may have had to pay to the United States by reason of the execution of said bond, and upon so doing the surety will be relieved from further liability: *Provided further*, That in all suits instituted under the provisions of this Act such personal notice of the pendency of such suits, informing them of their right to intervene as the court may order, shall be given to all known creditors, and in addition thereto notice of publication in some newspaper of general circulation, published in the State or town where the contract is being performed, for at least three successive weeks, the last publication to be at least three months before the time limited therefor. *Act of February 24, 1905 (33 Stats., 811).*

(This paragraph amends the act of March 13, 1894, 28 Stats., 278, and takes the place of paragraph 1576.)

CHAPTER XXXIII.

THE PUBLIC LANDS—MILITARY RESERVATIONS—MILITARY POSTS.

HOMESTEADS.

1587a. The rights of honorably discharged Union soldiers and sailors of the late civil and the Spanish war, as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes,[1] as amended by the Act of March first, nineteen hundred and one, shall not be abridged. *Sec. 4, Act of April 27, 1904 (33 Stats., 322).*

---

[1] SEC. 2304, R. S. Every private soldier and officer who has served in the Army of the United States during the recent rebellion, for ninety days, and who was honorably discharged, and has remained loyal to the Government, including the troops mustered into the service of the United States by virtue of the third section of an act approved February thirteenth, eighteen hundred and sixty-two, and every seaman, marine, and officer who has served in the Navy of the United States, or in the Marine Corps, during the rebellion, for ninety days, and who was honorably discharged, and has remained loyal to the Government, shall, on compliance with the provisions of this chapter, as hereinafter modified, be entitled to enter upon and receive patents for a quantity of public lands not exceeding one hundred and sixty acres, or one-quarter section, to be taken in compact form, according to legal subdivisions, including the alternate reserved sections of public lands along the line of any railroad or other public work, not otherwise reserved or appropriated, and other lands subject to entry under the homestead laws of the United States; but such homestead

(See paragraphs 1586, 1587, and 1592.)

ACQUISITION OF LANDS BY THE UNITED STATES. (PHILIPPINE ISLANDS.)

1599a. All the property and rights which may have been acquired in the Philippine Islands by the United States under the treaty of peace with Spain, signed December tenth, eighteen hundred and ninety-eight, except such land or other property as shall be designated by the President of the United States for military and other reservations of the Government of the United States, are hereby placed under the control of the government of said islands to be administered for the benefit of the inhabitants thereof, except as provided is this Act. *Sec. 12, Act of July 1, 1902 (32 Stats., 695).*

PUBLIC LANDS (PHILIPPINE ISLANDS).

1599b. Whenever it shall be made to appear to the secretary of any province or the commander of any military department in the Philippine Islands that any lands within the province are saline in character, it shall be the duty of said provincial secretary or commander, under the regulations of the Government of the Philippine Islands, to take testimony in reference to such lands, to ascertain their true character, and to report the same to the secretary of the interior for the Philippine Islands; and if, upon such testimony, the secretary of the interior shall find that such lands are saline and incapable of being purchased under any of the laws relative to the public domain, then and in such case said lands shall be offered for sale at the office of the provincial secretary or such other officer as by the said government may be described as mining recorder of the province or department in which the same shall be situated, as the case may be, under such regulations as may be prescribed by said Government and sold to the highest bidder, for cash, at a price of not less than three dollars per hectare; and in case such lands fail to sell when so offered, then the same shall be subject to private sale at such office, for cash, at a price not less than three dollars per hectare, in the same manner as other lands in

---

settler shall be allowed six months after locating his homestead, and filing his declaratory statement, within which to make his entry and commence his settlement and improvement.

Sec. 2305, R. S. The time which the homestead settler has served in the Army, Navy, or Marine Corps shall be deducted from the time heretofore required to perfect title, or if discharged on account of wounds received or disability incurred in the line of duty, then the term of enlistment shall be deducted from the time heretofore required to perfect title, without reference to the length of time he may have served; but no patent shall issue to any homestead settler who has not resided upon, improved, and cultivated his homestead for a period of at least one year after he shall have commenced his improvements.

the said Islands are sold. All executive proclamations relating to the sales of public saline lands shall be published in only two newspapers, one printed in the English language and one in the Spanish language, at Manila, which shall be designated by said Secretary of the interior. *Sec. 58, Act of July 1, 1902 (32 Stats., 705).*

1599c. Whenever it shall be made to appear to the secretary of any province or the commander of any military department in the Philippine Islands that any lands within the province are saline in character, it shall be the duty of said provincial secretary or commander, under the regulations of the government of the Philippine Islands, to take testimony in reference to such lands, to ascertain their true character, and to report the same to the secretary of the interior for the Philippine Islands; and if upon such testimony the secretary of the interior shall find that such lands are saline and incapable of being purchased under any of the laws relative to the public domain, then and in such case said lands shall be offered for sale at the office of the provincial secretary, or such other officer as by the said government may be described as mining recorder of the province or department in which the same shall be situated, as the case may be, under such regulations as may be prescribed by said government and sold to the highest bidder for cash at a price of not less than six pesos per hectare; and in case such lands fail to sell when so offered, then the same shall be subject to private sale at such office, for cash, at a price not less than six pesos per hectare, in the same manner as other lands in the said islands are sold. All executive proclamations relating to the sales of public saline lands shall be published in only two newspapers, one printed in the English language and one in the Spanish language, at Manila, which shall be designated by said secretary of the interior. *Sec. 9, Act of February 6, 1905 (33 Stats., 697).*

(This paragraph amends section 58 of the act of July 1, 1902, and takes the place of paragraph 1599*b*.)

ACKNOWLEDGMENT OF DEEDS.

1599d. Deeds and other instruments affecting land situate in the District of Columbia or any Territory of the United States may be acknowledged in the islands of Guam and Samoa or in the Canal Zone before any notary public or judge, appointed therein by proper authority, or by any officer therein who has ex officio the powers of a notary public: *Provided*, That the certificate by such notary in Guam, Samoa, or the Canal Zone, as the case may be, shall be accompanied by the certificate of the governor or acting governor of such place to the effect that the notary taking said acknowledgment was in fact the officer he purported to be; and any deeds or other instruments affecting lands so situate, so acknowledged since the first day of January, nineteen hundred and five, and accompanied by such certificate shall have the same effect as such deeds or other instruments hereafter so acknowledged and certified. *Act of June 28, 1906 (34 Stats., 552).*

RUINS OR MONUMENTS.

1614a. Any person who shall appropriate, excavate, injure, or destroy any historic or prehistoric ruin or monument, or any object of antiquity, situated on lands owned or controlled by the Government of the United States, without the permission of the Secretary of the Department of the Government having jurisdiction over the lands on which said antiquities are situated, shall, upon conviction, be fined in a sum of not more than five hundred dollars or be imprisoned for a period of not more than ninety days, or shall suffer both fine and imprisonment, in the discretion of the court. *Sec. 1, Act of June 8, 1906 (34 Stats., 225).*

1614b. The President of the United States is hereby authorized, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected: *Provided*, That when such objects are situated upon a tract covered by a bona fide unperfected claim or held in private ownership, the tract, or so much thereof as may be necessary for the proper care and management of the object, may be relinquished to the Government, and the Secretary of the Interior is hereby authorized to accept the relinquishment of such tracts in behalf of the Government of the United States. *Sec. 2, Act of June 8, 1906 (34 Stats., 225).*

1614c. Permits for the examination of ruins, the excavation of archæological sites, and the gathering of objects of antiquity upon the lands under their respective jurisdictions may be granted by the Secretaries of the Interior, Agriculture, and War to institutions which they may deem properly qualified to conduct such examination, excavation, or gathering, subject to such rules and regulations as they may prescribe: *Provided*, That the examinations, excavations, and gatherings are undertaken for the benefit of reputable museums, universities, colleges, or other recognized scientific or educational institutions, with a view to increasing the knowledge of such objects, and that the gatherings shall be made for permanent preservation in public museums. *Sec. 3, Act of June 8, 1906 (34 Stats., 225).*

1614d. The Secretaries of the Departments aforesaid shall make and publish from time to time uniform rules and regulations for the purpose of carrying out the provisions of this Act. *Sec. 4, Act of June 8, 1906 (34 Stats., 225).*

MILITARY POSTS.

1621a. Hereafter no military post within the United States shall be established without the express authority of Congress. *Act of March 2, 1905 (33 Stats., 836).*

HAWAII.

1625a. The Secretary of War is authorized to acquire leases in such lands in Hawaii as have been set aside for purposes of a military post. *Act of June 28, 1902 (32 Stats., 464).*

CHAPTER XXXIV.

THE PUBLIC PROPERTY.

DEFICIENCY IN, AND DAMAGE TO, PUBLIC PROPERTY.

1640a. Hereafter moneys arising from deductions made from carriers on account of the loss of or damage to military stores in transit shall be credited to the proper appropriation or funds out of which such or similar stores shall be replaced and individual pieces of United States armament which are not needed on account of historical value, and can be advantageously replaced, may be sold at a price not less than their cost price, when there exist for such sale sentimental reasons adequate in the judgment of the Secretary of War or Secretary of the Navy. *Act of March 2, 1905 (33 Stats., 840).*

(See paragraphs 1178 and 1181a.)

CHAPTER XXXV.

THE MILITIA—THE MILITIA OF THE DISTRICT OF COLUMBIA—THE TERRITORIAL MILITIA.

COMPOSITION AND ENROLLMENT.

1650a. Sections sixteen hundred and twenty-five to sixteen hundred and sixty, both included, of title sixteen of the Revised Statutes, and section two hundred and thirty-two therof, relating to the militia, are hereby repealed. *Sec. 25, Act of January 21, 1903 (32 Stats., 780).*

(This paragraph repeals paragraphs 133, 1651 to 1690, both inclusive, and paragraphs 2020 to 2022, both inclusive.)

1651a. The militia shall consist of every able-bodied male citizen of the respective States, Territories, and the District of Columbia, and every able-bodied male of foreign birth who has declared his intention to become a citizen, who is more than eighteen and less than forty-five years of age. *Sec. 1, Act of January 21, 1903 (32 Stats., 775).*

(This and the following paragraph take the place of the paragraph repealed by the act of January 21, 1903 (32 Stats., 775). See paragraphs 1650a and 1707.)

1651b. [The militia] shall be divided into two classes—the organized militia, to be known as the National Guard of the State, Territory, or District of Columbia, or by such other designations as may be given them by the laws of the respective States or Territories, and the remainder to be known as the Reserve Militia. *Sec. 1, Act of January 21, 1903 (32 Stats., 775).*

EXEMPTIONS.

1655a. The Vice-President of the United States, the officers, judicial and executive, of the Government of the United States, the members and officers of each House of Congress, persons in the military or naval service of the United States, all custom-house officers, with their clerks, postmasters and persons employed by the United States in the transmission of the mail, ferrymen employed at any ferry on a post road, artificers and workmen employed in the armories and arsenals of the United States, pilots, mariners actually employed in the sea service of any citizen or merchant within the United States, and all persons who are exempted by the laws of the respective States or Territories shall be exempted from militia duty, without regard to age. *Sec. 2, Act of January 21, 1903 (32 Stats., 775).*

(See paragraph 1708.)

1655b. Nothing in this Act shall be construed to require or compel any member of any well-recognized religious sect or organization at present organized and existing whose creed forbids its members to participate in war in any form, and whose religious convictions are against war or participation therein, in accordance with the creed of said religious organization, to serve in the militia or any other armed or volunteer force under the jurisdiction and authority of the United States. *Sec. 2, Act of January 21, 1903 (32 Stats., 775).*

ORGANIZATION.

1656a. The regularly enlisted, organized, and uniformed active militia in the several States and Territories and the District of Columbia who have heretofore participated or shall hereafter participate in the apportionment of the annual appropriation provided by section sixteen hundred and sixty-one of the Revised Statutes of the United States, as amended, whether known and designated as National Guard, militia, or otherwise, shall constitute the organized militia. The organization, armament, and discipline of the organized militia in the several States and Territories and in the District of Columbia shall be the same as that which is now or may hereafter be prescribed for the Regular and Volunteer Armies of the United States, within five years from the date of the approval of this Act. *Sec. 3, Act of January 21, 1903 (32 Stats., 775).*

(See paragraph 1717.)

1657a. The President of the United States, in time of peace, may by order fix the minimum number of enlisted men in each company, troop, battery, signal corps, engineer corps, and hospital corps. *Sec. 3, Act of January 21, 1903 (32 Stats., 775).*

(See paragraph 1718.)

1661a. Any corps of artillery, cavalry and infantry existing in any of the States at the passage of the Act of May eighth, seventeen hundred and ninety-two, which, by the laws, customs or usages of the said States have been in continuous existence since the passage of said Act under its provisions and under the provisions of Section two hundred and thirty-two and Sections sixteen hundred and twenty-five to sixteen hundred and sixty, both inclusive, of Title sixteen of the Revised Statutes of the United States relating to the Militia, shall be allowed to retain their accustomed privileges, subject, nevertheless, to all other duties required by law in like manner as the other Militia. *Sec. 3, Act of January 21, 1903 (32 Stats., 775).*

INSTRUCTION AND DISCIPLINE.

1662a. The Secretary of War is hereby authorized to provide for participation by any part of the organized militia of any State or Territory on the request of the governor thereof in the encampment, maneuvers, and field instruction of any part of the Regular Army at or near any military post or camp or lake or seacoast defenses of the United States. In such case the organized militia so participating shall receive the same pay, subsistence, and transportation as is provided by law for the officers and men of the Regular Army, to be paid out of the appropriation for the pay, subsistence, and transportation of the Army: *Provided*, That the command of such military post or camp and of the officers and troops of the United States there stationed shall remain with the regular commander of the post without regard to the rank of the commanding or other officers of the militia temporarily so encamped within its limits or in its vicinity. *Sec. 15, Act of January 21, 1903 (32 Stats., 777).*

1662b. No part of the sums appropriated for the support of the Regular Army shall be used to pay any part of the expenses of the organized militia of any State, Territory, or District of Columbia, while engaged in joint encampment, maneuvers, and field instruction of the Regular Army and militia as provided by section fifteen of the Act of January twenty-first, nineteen hundred and three, entitled "An Act to promote the efficiency of the militia, and for other purposes." *Act of April 23, 1904 (33 Stats., 265).*

1662c. Each State or Territory furnished with material of war under the provisions of this or former Acts of Congress shall, during the year next preceding each annual allotment of funds, in accordance with section sixteen hundred and sixty-one of the Revised Statutes as amended, have required every company, troop, and battery in its organized militia not excused by the governor of such State or Territory to participate in practice marches or go into camp of instruction at least five consecutive days, and to assemble for drill and instruction at company, battalion, or regimental armories or rendezvous or for target practice not less than twenty-four times, and shall also have required during such year an inspection of each such company, troop, and battery to be made by an officer of such militia or an officer of the Regular Army. *Sec. 18, Act of January 21, 1903 (32 Stats., 778).*

1662d. Upon the application of the governor of any State or Territory furnished with material of war under the provisions of this Act or former laws of Congress, the Secretary of War may detail one or more officers of the Army to attend any encampment of the organized militia, and to give such instruction and information to the officers and men assembled in such camp as may be requested by the governor. Such officer or officers shall immediately make a report of such encampment to the Secretary of War, who shall furnish a copy thereof to the governor of the State or Territory. *Sec. 19, Act of January 21, 1903 (32 Stats., 778).*

1662e. Upon application of the governor of any State or Territory furnished with material of war under the provisions of this Act or former laws of Congress, the Secretary of War may, in his discretion, detail one or more officers of the Army to report to the governor of such State or Territory for duty in connection with the organized militia. All such assignments may be revoked at the request of the governor of such State or Territory or at the pleasure of the Secretary of War. *Sec. 20, Act of January 21, 1903 (32 Stats., 779).*

1662f. Hereafter when any portion of the organized militia of any State, Territory, or the District of Columbia participates in the encampment, maneuvers, and field instruction of any part of the Regular

Army, under the provisions of section fifteen of the Act of January twenty-first, nineteen hundred and three, they may, after being duly mustered by an officer of the Regular Army, be paid at any time after such muster for the period from the date of leaving the home rendezvous to date of return thereto as determined in advance, both dates inclusive, and such payment, if otherwise correct, shall pass to the credit of the paymaster making the same. *Act of June 12, 1906 (34 Stats., 249).*

1663a. Whenever any officer of the organized militia shall, upon recommendation of the governor of any State, Territory, or general commanding the District of Columbia, and when authorized by the President, attend and pursue a regular course of study at any military school or college of the United States such officer shall receive from the annual appropriation for the support of the Army the same travel allowances, and quarters, or commutation of quarters, to which an officer of the Regular Army would be entitled if attending such school or college under orders from proper military authority, and shall also receive commutation of subsistence at the rate of one dollar per day while in actual attendance upon the course of instruction. *Sec. 16, Act of January 12, 1903 (32 Stats., 778).*

RETURNS.

1664a. There shall be appointed in each State, Territory and District of Columbia, an Adjutant-General, who shall perform such duties as may be prescribed by the laws of such State, Territory, and District, respectively, and make returns to the Secretary of War, at such times and in such form as he shall from time to time prescribe, of the strength of the organized militia, and also make such reports as may from time to time be required by the Secretary of War. That the Secretary of War shall, with his annual report of each year, transmit to Congress an abstract of the returns and reports of the adjutants-general of the States, Territories, and the District of Columbia, with such observations thereon as he may deem necessary for the information of Congress. *Sec. 12, Act of January 21, 1903 (32 Stats., 776).*

(See paragraphs 1715 and 1716.)

ACTIVE SERVICE OF THE MILITIA.

1669a. Whenever the United States is invaded, or in danger of invasion from any foreign nation, or of rebellion against the authority of the Government of the United States, or the President is unable, with the other forces at his command, to execute the laws of the Union in any part thereof, it shall be lawful for the President to call forth, for a period not exceeding nine months, such number of the militia of the State or of the States or Territories or of the District of Columbia as he may deem necessary to repel such invasion, suppress such rebellion, or to enable him to execute such laws, and to issue his orders for that purpose to such officers of the militia as he may think proper. *Sec. 4, Act of January 21, 1903 (32 Stats., 776).*

(See paragraph 1711.)

1670a. When the militia of more than one State is called into the actual service of the United States by the President he may, in his discretion, apportion them among such States or Territories or to the District of Columbia according to representative population. *Sec. 6, Act of January 21, 1903 (32 Stats., 776).*

1671a. The militia, when called into the actual service of the United States, shall be subject to the same Rules and Articles of War as the regular troops of the United States. *Sec. 9, Act of January 21, 1903 (32 Stats., 776).*

1672a. Courts-martial for the trial of officers or men of the militia, when in the service of the United States, shall be composed of militia officers only. *Sec. 8, Act of January 21, 1903 (32 Stats., 776).*

1673a. Whenever the President calls forth the militia of any State or Territory or of the District of Columbia to be employed in the service of the United States, he may specify in his call the period for which such service is required, not exceeding nine months, and the militia so called shall continue to serve during the term so specified, unless sooner discharged by order of the President. *Sec. 5, Act of January 21, 1903 (32 Stat., 776).*

(See paragraph 1711.)

1674a. Every officer and enlisted man of the militia who shall be called forth in the manner hereinbefore prescribed and shall be found fit for military service shall be mustered or accepted into the United States service by a duly authorized mustering officer of the United States: *Provided, however*, That any officer or enlisted man of the militia who shall refuse or neglect to present himself to such mustering officer upon being called forth as herein prescribed shall be subject to trial by court-martial, and shall be punished as such court-martial may direct. *Sec. 7, Act of January 21, 1903 (32 Stats., 776).*

(See paragraph 1711.)

PAY, RATIONS, EMOLUMENTS.

1681a. The militia, when called into the actual service of the United States, shall, during their time of service, be entitled to the same pay and allowances as are or may be provided by law for the Regular Army. *Sec. 10, Act of January 21, 1903 (32 Stats., 776).*

1683a. When the militia is called into the actual service of the United States, or any portion of the militia is accepted under the provisions of this Act, their pay shall commence from the day of their appearing at the place of company rendezvous. But this provision shall not be construed to authorize any species of expenditure previous to arriving at such places of rendezvous which is not provided by existing laws to be paid after their arrival at such places of rendezvous. *Sec. 11, Act of January 21, 1903 (32 Stats., 776).*

PENSIONS.

1687a. When any officer, noncommissioned officer, or private of the militia is disabled by reason of wounds or disabilities received or incurred in the service of the United States he shall be entitled to all the benefits of the pension laws existing at the time of his service, and in case such officer, noncommissioned officer, or private dies in the service of the United States or in returning to his place of residence after being mustered out of such service, or at any time, in consequence of wounds or disabilities received in such service, his widow and children, if any, shall be entitled to all the benefits of such pension laws. *Sec. 22, Act of January 21, 1903 (32 Stats., 779).*

ARMAMENT AND EQUIPMENT.

1691a. The sum of two million dollars is hereby annually appropriated, to be paid out of any money in the Treasury not otherwise appropriated, for the purpose of providing arms, ordnance stores, quartermaster stores, and camp equipage for issue to the militia, such appropriation to remain available until expended. *Sec. 1, Act of June 22, 1906 (34 Stats., 449).*

(This paragraph reenacts and amends section 1661 of the Revised Statutes, as amended by the acts of February 12, 1887, and June 6, 1900. See paragraph 1691.)

1691b. Said appropriation shall be apportioned among the several States and Territories, under the direction of the Secretary of War, according to the number of Senators and Representatives to which each State respectively is entitled in the Congress of the United States, and to the Territories and District of Columbia such proportion and under such regulations as the President may prescribe: *Provided, however*, That no State shall be entitled to the benefits of the appropriation apportioned to it unless the number of its regularly enlisted, organized, and uniformed active militia shall be at least one hundred men for each Senator and Representative to which such State is entitled in the Congress of the United States. And the amount of said appropriation which is thus determined not to be available shall be covered back into the Treasury: *Provided also*, That the sums so apportioned among the several States and Teritories and the District of Columbia shall be available for the purpose named in section fourteen of the Act of January twenty-first, nineteen hundred and three, for the actual excess of expenses of travel in making the inspections therein provided for over the allowances made for same by law; for the promotion of rifle practice, including the acquisition, construction, maintenance, and equipment of shooting galleries and suitable target ranges; for the hiring of horses and draft animals for the use of mounted troops, batteries, and wagons; for forage for the same and for such other incidental expenses in connection with encampments, maneuvers, and field instruction provided for in sections fourteen and fifteen of the said Act of January twenty-first, nineteen hundred and three, as the Secretary of War may deem necessary. *Sec. 2, Act of June 22, 1906* (*34 Stats., 449*).

(This paragraph reenacts and amends section 2 of the act of February 12, 1887. See paragraph 1693.)

1692a. The annual appropriation made by section sixteen hundred and sixty-one, Revised Statutes, as amended, shall be available for the purpose of providing for issue to the organized militia any stores and supplies or publications which are supplied to the Army by any department. Any State, Territory, or the District of Columbia may, with the approval of the Secretary of War, purchase for cash from the War Department, for use of its militia, stores, supplies, material of war, or military publications, such as are furnished to the Army, in addition to those issued under the provisions of this Act, at the price at which they are listed for issue to the Army, with the cost of transportation added, and funds received from such sales shall be credited to the appropriations to which they belong and shall not be covered into the Treasury, but shall be available until expended to replace therewith the supplies sold to the State and Territories and to the District of Columbia in the manner herein provided. *Sec. 17, Act of January 21, 1903* (*32 Stats., 778*).

(See paragraph 277, 1691–1693.)

1692b. The sums hereby appropriated for the expenses of the organized militia for such joint encampment, maneuvers, and field instruction shall be disbursed as, and for that purpose shall constitute, one fund; and the Secretary of War shall hereafter forward to Congress at its next session a detailed statement of the expenses of such encampments and maneuvers. *Act of April 23, 1904* (*33 Stats., 265*).

(This paragraph relates to the joint encampment, etc., provided for by sections 15 and 21 of the act of January 21, 1903. See paragraphs 1662a and 1699a.)

1693a. Whenever it shall appear by the report of inspections, which it shall be the duty of the Secretary of War to cause to be made at least once in each year by officers detailed by him for that purpose, that the organized militia of a State or Territory or of the District of Columbia is sufficiently armed, uniformed, and equipped for active duty in the field, the Secretary of War is authorized, on the requisition of the governor of such State or Territory, to pay to the quartermaster-general thereof, or to such other officer of the militia of said State as the said governor may designate and appoint for the purpose, so much of its allotment out of the said annual appropriation under section sixteen hundred and sixty-one of the Revised Statutes as amended as shall be necessary for the payment, subsistence, and transportation of such portion of said organized militia as shall engage in actual field or camp service for instruction, and the officers and enlisted men of such militia while so engaged shall be entitled to the same pay, subsistence, and transportation or travel allowances as officers and enlisted men of corresponding grades of the Regular Army are or may hereafter be entitled by law, and the officer so designated and appointed shall be regarded as a disbursing officer of the United States, and shall render his accounts through the War Department to the proper accounting officers of the Treasury for settlement, and he shall be required to give good and sufficient bonds to the United States, in such sums as the Secretary of War may direct, faithfully to account for the safe-keeping and payment of the public moneys so intrusted to him for disbursement. *Sec. 14, Act of January 21, 1903 (32 Stats., 777).*

(See paragraph 1693.)

1694a. The purchase or manufacture of arms, ordnance stores, quartermaster stores, and camp equipage for the militia under the provisions of this Act shall be made under the direction of the Secretary of War, as such arms, ordnance and quartermaster stores, and camp equipage are now manufactured or otherwise provided for the use of the Regular Army, and they shall be receipted for and shall remain the property of the United States, and be annually accounted for by the governors of the States and Territories and by the commanding general of the National Guard of the District of Columbia, for which purpose the Secretary of War shall prescribe and supply the necessary blanks and make such regulations as he may deem necessary to protect the interests of the United States. *Sec. 3, Act of June 22, 1906 (34 Stats., 450).*

(This paragraph reenacts and amends section 3 of the act of February 12, 1887. See paragraph 1694.)

1696a. Whenever any property furnished to any State or Territory, or the District of Columbia, as hereinbefore provided, has been lost or destroyed, or has become unserviceable or unsuitable from use in service, or from any other cause, it shall be examined by a disinterested surveying officer of the organized militia, to be appointed by the governor of the State or Territory, or the commanding general of the National Guard of the District of Columbia, to whom the property has been issued, and his report shall be forwarded by said governor or commanding general direct to the Secretary of War, and if it shall appear to the Secretary of War from the record of survey that the property has been lost or destroyed through unavoidable causes, he is hereby authorized to relieve the State from further accountability therefor; if it shall appear that the loss or destruction of property was due to carelessness or neglect or that its loss could have been avoided by the exercise of reasonable care, the money value thereof shall be charged against the allotment to the States under section sixteen hundred and sixty-one of the Revised Statutes as amended. If the articles so surveyed are found to be unserviceable or unsuitable, the Secretary of War shall direct what disposition, by sale or otherwise, shall be made of them, except unserviceable clothing which shall be destroyed, and if sold the proceeds of such sale shall be covered into the Treasury of the United States. *Sec. 4, Act of June 22, 1906 (34 Stats., 450).*

(This paragraph amends section 4 of the act of February 12, 1887, and takes the place of paragraph 1696.)

1699a. The troops of the militia encamped at any military post or camp of the United States may be furnished such amounts of ammunition for instruction in firing and target practice as may be prescribed by the Secretary of War, and such instruction in firing shall be carried on under the direction of an officer selected for that purpose by the proper military commander. *Sec. 21, Act of January 21, 1903 (32 Stats., 779).*

1700a. The Secretary of War is hereby authorized to issue, on the requisitions of the governors of the several States and Territories, or of the commanding general of the militia of the District of Columbia, such number of the United States standard service magazine arms, with bayonets, bayonet scabbards, gun slings, belts, and such other necessary accouterments and equipments as are required for the Army of the United States, for arming all of the organized militia in said States and Territories and District of Columbia, without charging the cost or value thereof, or any which have been issued since December first, nineteen hundred and one, or any expense connected therewith, against the allotment to said State, Territory, or District of Columbia, out of the annual appropriation provided by section sixteen hundred and sixty-one of the Revised Statutes, as amended, or requiring payment therefor, and to exchange, without receiving any money credit therefor, ammunition, or parts thereof, suitable to the new arms, round for round, for corresponding ammunition suitable to the old arms theretofore issued to said State, Territory, or District by the United States: *Provided*, That said rifles and carbines and other property shall be receipted for and shall remain the property of the United States and be annually accounted for by the governors of the States and Territories as now required by law, and that each State, Territory, and District shall, on receipt of the new arms, turn in to the Ordnance Department of the United States Army, without receiving any money credit therefor, and without expense for transportation, all United States rifles and carbines now in its possession.

To provide means to carry into effect the provisions of this section, the necessary money to cover the cost of exchanging or issuing the new arms, accouterments, equipments, and ammunition to be exchanged or issued hereunder is hereby appropriated out of any moneys in the Treasury not otherwise appropriated. *Sec. 13, Act of January 21, 1903 (32 Stats., 777).*

(See paragraphs 1694, 1739–1740.)

1700b. For the purpose of furnishing the necessary articles requisite to fully arm, equip, and supply each regiment, battalion, squadron, company, troop, battery, signal, engineer, and hospital corps and medical department of the organized militia of the several States, Territories, and the District of Columbia with the same armament and equipment as are now prescribed for corresponding branches of the line or staff in the Regular Army, without cost to said States, Territories, or the District of Columbia, but to remain the property of the United States, and to be accounted for in the manner now prescribed by law, the Secretary of War is hereby authorized, under such regulations as he may prescribe, on the requisitions of the governors of the several States and Territories, or the commanding general of the militia of the District of Columbia, to issue the said armament and equipment to the organized militia; and the sum of two million dollars is hereby appropriated and made immediately available until expended for the procurement and issue of the articles constituting the same. *Act of March, 2, 1903 (32 Stats., 942).*

1700c. For the purpose of procuring field-artillery material for the organized militia of the several States, Territories, and the District of Columbia, without cost to the said States, Territories, or the District of Columbia, but to remain the property of the United States and to be accounted for in the manner now prescribed by law, the Secretary of War is hereby authorized, under such regulations as he may prescribe, on the requisitions of the governors of the several States and Territories or the commanding general of the militia of the District of Columbia, to issue said artillery material to the organized militia; and the sum of five hundred and eighty-five thousand dollars is hereby appropriated and made immediately available, for the procurement and issue of the articles constituting the same. *Act of April 23, 1904 (33 Stats., 275).*

1700d. It shall be the duty of the Secretary of War, whenever a new type of small arm shall have been adopted for the use of the Regular Army, and when a sufficient quantity of such arms shall have been manufactured to constitute, in his discretion, an adequate reserve for the armament of any regular and volunteer forces that it may be found necessary to raise in case of war, to cause the organized militia of the United States to be furnished with small arms of the type so adopted, with bayonets and the necessary accouterments and equipments, including ammunition therefor: *Provided*, That such issues shall be made in the manner provided in section thirteen of the Act approved January twenty-first, nineteen hundred and three, entitled "An Act to promote the efficiency of the militia, and for other purposes." *Act of March 2, 1907 (34 Stats., 1174).*

(See paragraph 1700a.)

1700e. The Secretary of War is hereby authorized to sell, at the prices at which they are listed for the Army, upon the request of the governors of the several States and Territories, such magazine rifles belonging to the United States as are not necessary for the equipment of the Army and the organized militia, for the use of rifle clubs formed under regulations prepared by the national board for the promotion of rifle practice and approved by the Secretary of War. *Sec. 1, Act of March 3, 1905 (33 Stats., 986).*

(See paragraphs 1692a and 1692c.)

1700f. The Secretary of War is hereby authorized in his discretion to sell to the several States and Territories, as prescribed in section seventeen of the Act approved January twenty-first, nineteen hundred and three, for the use of said clubs, ammunition, ordnance stores, and equipments of the Government standard at the prices at which they are listed for the Army. The practice of the rifle clubs herein provided shall be carried on in conformity to regulations prescribed by the national board for the promotion of rifle practice, approved by the Secretary of War, and the results thereof shall be filed in the office of the Military Secretary of the Army. *Sec. 2, Act of March 3, 1905 (33 Stats., 987).*

1705a. Section two of the Act approved May nineteenth, eighteen hundred and eighty-two, authorizing the Secretary of War to issue, on the requisition of the governor of a State bordering on the sea or

Gulf coast, and having a permanent camping ground for the encampment of the militia not less than six days annually, two heavy guns and four mortars, with carriages and platforms, for their instruction, and for the construction of a suitable battery for the cannon so issued, and appropriating five thousand dollars for each State to carry out the above-mentioned objects, is hereby repealed: *Provided*, That this repeal shall not affect the existing law regarding the disposition of the cannon and other stores already issued. *Act of March 2, 1907* (*34 Stats., 1060*).

(This paragraph repeals paragraph 1705.)

THE MILITIA OF THE DISTRICT OF COLUMBIA.

ARMS, UNIFORMS, AND EQUIPMENTS.

1742a. All moneys collected on account of deductions made from the pay of any officer or enlisted man of the National Guard of the District of Columbia on account of Government property lost or destroyed by such individual shall be repaid into the United States Treasury to the credit of the officer of the militia of the District of Columbia who is accountable to the United States Government for such property lost or destroyed. *Act of April 27, 1904* (*33 Stats., 389*).

1750a. All moneys collected on account of deductions made from the pay of any officer or enlisted man of the National Guard of the District of Columbia for or on account of any violation of the regulations governing said National Guard shall be held by the commanding general of the militia of the District of Columbia, who is authorized to expend such moneys so collected for necessary clerical and general incidental expenses of the service, including books, or for the pay of troops, other than Government employees; and for all moneys so collected and expended the commanding general shall make an accounting in like manner as for the appropriation disbursed for pay of troops. *Act of April 27, 1904* (*33 Stats., 389*).

(This paragraph amends paragraph 1750.)

EXPENSES AND ALLOWANCES, DISTRICT OF COLUMBIA.

1770a. For the following, to be expended under the authority of the commanding general, who is hereby authorized and empowered to make necessary contracts and leases, and to be accounted for in like manner as the appropriations disbursed for pay of troops, namely:

For rent, fuel, light, heat, care, and repair of armories, practice ships, boats, machinery, and dock, dredging alongside of dock, and for telephone service, eighteen thousand dollars.

For lockers, furniture, and gymnastic aparatus for armories, four hundred dollars.

For printing and stationery, six hundred and fifty dollars.

For cleaning and repairing uniforms, arms, and equipments, and contingent expenses, one thousand two hundred and fifty dollars.

For custodian in charge of United States property and storerooms, nine hundred dollars.

For clerk, office of the Adjutant-General, seven hundred and twenty dollars.

For expenses of drills and parades, one thousand seven hundred dollars.

For expenses of rifle practice and matches, three thousand six hundred dollars.

For expenses of camps, instruction, practice marches, and practice cruises, including fuel for cruising purposes, fifteen thousand two hundred dollars.

For pay of troops, other than Government employees, to be disbursed under the direction of the commanding-general, seventeen thousand six hundred dollars. *Act of April 27, 1904 (33 Stats., 389).*

(See paragraphs 1766, 1769–1770.)

NAVAL BATTALION, DISTRICT OF COLUMBIA.

1781a. In addition to the companies of volunteer militia now authorized in the District of Columbia there may be organized not more than four companies of naval militia, which shall constitute a battalion to be known as the naval battalion of the National Guard of the District of Columbia.

SEC. 2. That the officers of the naval battalion shall consist of one commander, and a staff to consist of one executive officer with the rank of lieutenant-commander, one navigating officer with the rank of lieutenant, one signal, ordnance, and equipment officer with the rank of lieutenant, one chief engineer, one paymaster, and one surgeon, each with the relative rank of lieutenant.

SEC. 3. That each company shall consist of one lieutenant, one lieutenant, junior grade, two ensigns, and not less than sixty nor more than one hundred petty officers and enlisted men.

SEC. 4. That in all matters not otherwise specially provided for, the provisions of law which provide for the organization of the militia of the District of Columbia shall apply to the naval battalion.

SEC. 5. That general routine of duty, discipline, and exercises of the naval battalion, and parts thereof, shall conform with the laws, customs, and usages of the Navy, as far as the same apply, and where they do not apply then such routine of duty, discipline, and exercises shall conform to the laws governing the volunteer forces of the District of Columbia. *Secs. 1 to 5, Act of May 11, 1898* (*30 Stats., 404.*)

CHAPTER XXXVI.

MILITARY TRIBUNALS.

ARREST AND CONFINEMENT.

1788a. For a donation of five dollars to each dishonorably discharged prisoner upon his release from confinement, under court-martial sentence, involving dishonorable discharge. * * * *Act of April 23, 1904* (*33 Stats., 269*).

(This paragraph is a reenactment of similar provisions contained in the annual appropriation acts for the support of the Army.)

1788b. For a suit of citizen's outer clothing, to cost not exceeding ten dollars, to be issued upon release from confinement to each prisoner who has been confined under a court-martial sentence involving dishonorable discharge. * * * *Act of April 23, 1904* (*33 Stats., 721*).

(This paragraph is a reenactment of similar provisions contained in the annual appropriation acts for the support of the Army.)

1788c. Transportation of the Army, including * * * the transportation of persons on their discharge from the United States military prison to their homes (or elsewhere as they may elect), provided the cost in each case shall not be greater than to the place of last enlistment, * * * dollars. *Act of March 2, 1907* (*34 Stats., 1169*).

PRISONS.

1788d. Hereafter any military prison that the Secretary of War may designate for the confinement of general prisoners for whom there is no room at the United States Military Prison at Fort Leavenworth, Kansas, or whom it is impracticable to send there, shall be regarded as a branch of the said United States Military Prison and equally with it shall be subject to the laws relating thereto, including chapter six, title fourteen, of the Revised Statutes. *Act of March 2, 1907* (*34 Stats., 1169*).

RULES OF EVIDENCE.

1815a. The competency of a witness to testify in any civil action, suit, or proceeding in the courts of the United States shall be determined by the laws of the State or Territory in which the court is held. *Act of June 29, 1906 (34 Stats., 618)*.

(This paragraph amends section 858 of the Revised Statutes, and paragraph 1815.)

UNITED STATES PRISONERS: GOOD CONDUCT ALLOWANCE.

1837a. Each prisoner who has been or shall hereafter be convicted of any offense against the laws of the United States, and is confined, in execution of the judgment or sentence upon any such conviction, in any United States penitentiary or jail, or in any penitentiary, prison, or jail of any State or Territory, for a definite term, other than for life, whose record of conduct shows that he has faithfully observed all the rules and has not been subjected to punishment, shall be entitled to a deduction from the term of his sentence to be estimated as follows, commencing on the first day of his arrival at the penitentiary, prison, or jail: Upon a sentence of not less than six months nor more than one year, five days for each month; upon a sentence of more than one year and less than three years, six days for each month; upon a sentence of not less than three years and less than five years, seven days for each month; upon a sentence of not less than five years and less than ten years, eight days for each month; upon a sentence of ten years or more, ten days for each month. When a prisoner has two or more sentences, the aggregate of his several sentences shall be the basis upon which his deduction shall be estimated. *Sec. 1, Act of June 21, 1902 (32 Stats., 397)*.

1837b. In the case of convicts in any United States penitentiary, the Attorney-General shall have the power to restore to any such convict who has heretofore or may hereafter forfeit any good time by violating any existing law or prison regulation such portion of lost good time as may be proper, in his judgment, upon recommendations and evidence submitted to him by the warden in charge. Restoration, in the case of United States convicts confined in State and Territorial institutions, shall be regulated in accordance with the rules governing such institutions, respectively. *Sec. 2, Act of June 21, 1902 (32 Stats., 397)*.

1837c. This Act shall take effect and be in force from and after thirty days from the date of its approval, and shall apply only to sentences imposed by courts subsequent to the time that this Act takes effect, as hereinbefore provided. Prisoners serving under any sentence imposed prior to such time shall be entitled and receive the commutation heretofore allowed under existing laws. Such existing laws are hereby repealed as to all sentences imposed subsequent to the time when this Act takes effect. *Sec. 3, Act of June 21, 1906 (32 Stats., 398)*.

CHAPTER XXXVII.

CITIZENSHIP AND NATURALIZATION.

CITIZENSHIP.

1871a. All children born outside the limits of the United States who are citizens thereof in accordance with the provisions of section nineteen hundred and ninety-three of the Revised Statutes of the United States and who continue to reside outside the United States shall, in order to receive the protection of this Government, be required upon reaching the age of eighteen years to record at an American consulate their intention to become residents and remain citizens of the United States and shall be further required to take the oath of allegiance to the United States upon attaining their majority. *Sec. 6, Act of March 2, 1907 (34 Stats., 1229).*

(This paragraph takes the place of paragraph 1871.)

1872a. Any American woman who marries a foreigner shall take the nationality of her husband. At the termination of the martial relation she may resume her American citizenship, if abroad, by registering as an American citizen within one year with a consul of the United States, or by returning to reside in the United States, or, if residing in the United States at the termination of the marital relation, by continuing to reside therein. *Sec. 3, Act of March 2, 1907 (34 Stats., 1228).*

1877a. Any American citizen shall be deemed to have expatriated himself when he has been naturalized in any foreign state in conformity with its laws, or when he has taken an oath of allegiance to any foreign state.

When any naturalized citizen shall have resided for two years in the foreign state from which he came, or for five years in any other foreign state it shall be presumed that he has ceased to be an American citizen, and the place of his general abode shall be deemed his place of residence during said years: *Provided, however*, That such presumption may be overcome on the presentation of satisfactory evidence to a diplomatic or consular officer of the United States, under such rules and regulations as the Department of State may prescribe: *And provided also*, That no American citizen shall be allowed to expatriate himself when this country is at war. *Sec. 2, Act of March 2, 1907 (34 Stats., 1228).*

(See paragraph 1877.)

1879a. The Secretary of State shall be authorized, in his discretion, to issue passports to persons not citizens of the United States as follows: Where any person has made a declaration of intention to become such a citizen as provided by law and has resided in the United States for three years a passport may be issued to him entitling him to the protection of the Government in any foreign country: *Provided*, That such passport shall not be valid for more than six months and shall not be renewed, and that such passport shall not entitle the holder to the protection of this Government in the country of which he was a citizen prior to making such declaration of intention. *Sec. 1, Act of March 2, 1907 (34 Stats., 1228)*.

(This paragraph amends section 4076 of the Revised Statutes.)

NATURALIZATION.

1880a. Exclusive jurisdiction to naturalize aliens as citizens of the United States is hereby conferred upon the following specified courts:

United States circuit and district courts now existing, or which may hereafter be established by Congress in any State, United States district courts for the Territories of Arizona, New Mexico, Oklahoma, Hawaii, and Alaska, the supreme court of the District of Columbia, and the United States courts for the Indian Territory; also all courts of record in any State or Territory now existing, or which may hereafter be created, having a seal, a clerk, and jurisdiction in actions at law or equity, or law and equity, in which the amount in controversy is unlimited.

That the naturalization jurisdiction of all courts herein specified, State, Territorial, and Federal, shall extend only to aliens resident within the respective judicial districts of such courts.

The courts herein specified shall, upon the requisition of the clerks of such courts, be furnished from time to time by the Bureau of Immigration and Naturalization with such blank forms as may be required in the naturalization of aliens, and all certificates of naturalization shall be consecutively numbered and printed on safety paper furnished by said Bureau. *Sec. 3, Act of June 29, 1906 (34 Stats., 596)*.

(This and the following paragraph—1880b—take the place of paragraphs 1880, 1884, and 1885, which are repealed by section 26 of the act above cited.)

1880b. An alien may be admitted to become a citizen of the United States in the following manner and not otherwise:

First. He shall declare on oath before the clerk of any court authorized by this Act to naturalize aliens, or his authorized deputy, in the district in which such alien resides, two years at least prior to his admission, and after he has reached the age of eighteen years, that it is bona fide his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly, by name, to the prince, potentate, state, or sovereignty of which the alien may be at the time a citizen or subject. And such declaration shall set forth the name, age, occupation, personal description, place of birth, last foreign residence and allegiance, the date of arrival, the name of the vessel, if any, in which he came to the United States, and the present place of residence in the United States of said alien: *Provided*, *however*, That no alien who, in conformity with the law in force at the date of his declaration, has declared his intention to become a citizen of the United States shall be required to renew such declaration.

Second. Not less than two years nor more than seven years after he has made such declaration of intention he shall make and file, in duplicate, a petition in writing, signed by the applicant in his own handwriting and duly verified, in which petition such applicant shall state his full name, his place of residence (by street and number, if possible), his occupation, and, if possible, the date and place of his birth; the place from which he emigrated, and the date and place of his arrival in the United States, and, if he entered through a port, the name of the vessel on which he arrived; the time when and the place and name of the court where he declared his intention to become a citizen of the United States; if he is married he shall state the name of his wife and, if possible, the country of her nativity and her place of residence at the time of filing his petition; and if he has children, the name, date, and place of birth and place of residence of each child living at the time of the filing of his petition: *Provided*, That if he has filed his declaration before the passage of this Act he shall not be required to sign the petition in his own handwriting.

The petition shall set forth that he is not a disbeliever in or opposed to organized government, or a member of or affiliated with any organization or body of persons teaching disbelief in or opposed to organized government, a polygamist or believer in the practice of polygamy, and that it is his intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name to the prince, potentate, state, or sovereignty of which he at the time of filing of his petition may be a citizen or subject, and that it is his intention to reside permanently within the United States, and whether or not he has been denied admission as a citizen of the United States, and, if denied, the ground or grounds of such denial, the court or courts in which such decision was rendered, and that the cause for such denial has since been cured or removed, and every fact material to his naturalization and required to be proved upon the final hearing of his application.

The petition shall also be verified by the affidavits of at least two credible witnesses, who are citizens of the United States, and who shall state in their affidavits that they have personally known the applicant to be a resident of the United States for a period of at least five years continuously, and of the State, Territory, or district in which the application is made for a period of at least one year immediately preceding the date of the filing of his petition, and that they each have personal knowledge that the petitioner is a person of good moral character, and that he is in every way qualified, in their opinion, to be admitted as a citizen of the United States.

At the time of filing his petition there shall be filed with the clerk of the court a certificate from the Department of Commerce and Labor, if the petitioner arrives in the United States after the passage of this Act, stating the date, place, and manner of his arrival in the United States, and the declaration of intention of such petitioner, which certificate and declaration shall be attached to and made a part of said petition.

Third. He shall, before he is admitted to citizenship, declare on oath in open court that he will support the Constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name of the prince, potentate, state, or sovereignty of which he was before a citizen or subject; that he will support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same.

Fourth. It shall be made to appear to the satisfaction of the court admitting any alien to citizenship that immediately preceding the date of his application he has resided continuously within the United States five years at least, and within the State or Territory where such court is at the time held one year at least, and that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same. In addition to the oath of the applicant, the testimony of at least two witnesses, citizens of the United States, as to the facts of residence, moral character, and attachment to the principles of the Constitution shall be required, and the name, place of residence, and occupation of each witness shall be set forth in the record.

Fifth. In case the alien applying to be admitted to citizenship has borne any hereditary title, or has been of any of the orders of nobility in the kingdom or state from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility in the court to which his application is made, and his renunciation shall be recorded in the court.

Sixth. When any alien who has declared his intention to become a citizen of the United States dies before he is actually naturalized the widow and minor children of such alien may, by complying with the other provisions of this Act, be naturalized without making any declaraton of intention. *Sec. 4, Act of June 29, 1906 (34 Stats, 596).*

(This and the preceding paragraph—1880a—take the place of paragraphs 1880, 1884, and 1885, which are repealed by section 26 of the act above cited.)

1881a. The clerk of the court shall, immediately after filing the petition, give notice thereof by posting in a public and conspicious place in his office, or in the building in which his office is situated, under an appropriate heading, the name, nativity, and residence of the alien, the date and place of his arrival in the United States, and the date, as nearly as may be, for the final hearing of his petition, and the names of the witnesses whom the applicant expects to summon in his behalf; and the clerk shall, if the applicant requests it, issue a subpœna for the witnesses so named by the said applicant to appear upon the day set for the final hearing, but in case such witnesses can not be produced upon the final hearing other witnesses may be summoned. *Sec. 5, Act of June 29, 1906 (34 Stats., 598).*

(This paragraph takes the place of paragraph 1881, which is repealed by section 26 of the act above cited.)

1881b. Petitions for naturalization may be made and filed during term time or vacation of the court and shall be docketed the same day as filed, but final action thereon shall be had only on stated days, to be fixed by rule of the court, and in no case shall final action be had upon a petition until at least ninety days have elapsed after filing and posting the notice of such petition: *Provided*, That no person shall be naturalized nor shall any certificate of naturalization be issued by any court within thirty days preceding the holding of any general election within its territorial jurisdiction. It shall be lawful, at the time and as a part of the naturalization of any alien, for the court, in its discretion, upon the petition of such alien, to make a decree changing the name of said alien, and his certificate of naturalization shall be issued to him in accordance therewith. *Sec. 6, Act of June 29, 1906 (34 Stats., 598).*

1885a. Any foreign woman who acquires American citizenship by marriage to an American shall be assumed to retain the same after the termination of the marital relation if she continue to reside in the United State, unless she makes formal renunciation thereof before a court having jurisdiction to naturalize aliens, or if she resides abroad she may retain her citizenship by registering as such before a United States consul within one year after the termination of such marital relation. *Sec. 4, Act of March 2, 1907 (34 Stats., 1229).*

(This paragraph takes the place of paragraph 1885, which was repealed by section 26 of the act of June 29, 1906.)

1887a. In case the petitioner has not resided in the State, Territory, or district for a period of five years continuously and immediately preceding the filing of his petition he may establish by two witnesses, both in his petition and at the hearing, the time of his residence within the State, provided that it has been for more than one year, and the remaining portion of his five years' residence within the United States required by law to be established may be proved by the depositions of two or more witnesses who are citizens of the United States, upon notice to the Bureau of Immigration and Naturalization and the United States attorney for the district in which said witnesses may reside. *Sec. 10, Act of June 29, 1906 (34 Stats., 599).*

1889a. A child born without the United States of alien parents shall be deemed a citizen of the United States by virtue of the naturalization of or resumption of American citizenship by the parent: *Provided*, That such naturalization or resumption takes place during the minority of such child: *And provided further*, That the citizenship of such minor child shall begin at the time such minor child begins to reside permanently in the United States. *Sec. 5, Act of March 2, 1907 (34 Stats., 1229).*

(See paragraph 1889.)

1892a. No person who disbelieves in or who is opposed to all organized government, or who is a member of or affiliated with any organization entertaining and teaching such disbelief in or opposition to all organized government, or who advocates or teaches the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the Government of the United States or of any other organized government, because of his or their official character, or who has violated any of the provisions of this Act, shall be naturalized or be made a citizen of the United States. All courts and tribunals and all judges and officers thereof having jurisdiction of naturalization proceedings or duties to perform in regard thereto shall, on the final application for naturalization, make careful inquiry into such matters, and before issuing the final order or certificate of naturalization cause to be entered of record the affidavit of the applicant and of his witnesses so far as applicable, reciting and affirming the truth of every material fact requisite for naturalization. All final orders and certificates of naturalization hereafter made shall show on their face specifically that said affidavits were duly made and recorded, and all orders and certificates that fail to show such facts shall be null and void.

That any person who purposely procures naturalization in violation of the provisions of this section shall be fined not more than five thousand dollars, or shall be imprisoned not less than one nor more than ten years, or both, and the court in which such conviction is had shall thereupon adjudge and declare the order or decree and all certificates admitting such person to citizenship null and void. Jurisdiction is hereby conferred on the courts having jurisdiction of the trial of such offense to make such adjudication.

That any person who knowingly aids, advises, or encourages any such person to apply for or to secure naturalization or to file the preliminary papers declaring an intent to become a citizen of the United States, or who in any naturalization proceeding knowingly procures or gives false testimony as to any material fact, or who knowingly makes an affidavit false as to any material fact required to be proved in such proceeding, shall be fined not more than five thousand dollars, or imprisoned not less than one nor more than ten years, or both. *Sec. 39, Act of March 3, 1903 (32 Stats., 1222).*

1892b. No person who disbelieves in or who is opposed to organized government, or who is a member of or affiliated with any organization entertaining and teaching such disbelief in or opposition to organized government, or who advocates or teaches the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the Government of the United States, or of any other organized government, because of his or their official character, or who is a polygamist, shall be naturalized or be made a citizen of the United States. *Sec. 7, Act of June 29, 1906 (34 Stats., 598).*

(This provision takes the place of a similar provision contained in paragraph 1892a, the whole of which is repealed by section 26 of the act above cited.)

1892c. No alien shall hereafter be naturalized or admitted as a citizen of the United States who can not speak the English language: *Provided*, That this requirement shall not apply to aliens who are physically unable to comply therewith, if they are otherwise qualified to become citizens of the United States: *And provided further*, That the requirements of this section shall not apply to any alien who has prior to the passage of this Act declared his intention to become a citizen of the United States in conformity with the law in force at the date of making such declaration: *Provided further*, That the requirements of section eight shall not apply to aliens who shall hereafter declare their intention to become citizens and who shall make homestead entries upon the public lands of the United States and comply in all respects with the laws providing for homestead entries on such lands. *Sec. 8, Act of June 29, 1906 (34 Stats., 599).*

1892d. Every final hearing upon such petition shall be had in open court before a judge or judges thereof, and every final order which may be made upon such petition shall be under the hand of the court and entered in full upon a record kept for that purpose, and upon such final hearing of such petition the applicant and witnesses shall be examined under oath before the court and in the presence of the court. *Sec. 9, Act of June 29, 1906 (34 Stats., 599).*

(This provision takes the place of a similar provision contained in paragraph 1892a, the whole of which is repealed by section 26 of the act above cited.)

1892e. The United States shall have the right to appear before any court or courts exercising jurisdiction in naturalization proceedings for the purpose of cross-examining the petitioner and the witnesses produced in support of his petition concerning any matter touching or in any way affecting his right to admission to citizenship, and shall have the right to call witnesses, produce evidence, and be heard in opposition to the granting of any petition in naturalization proceedings. *Sec. 11, Act of June 29, 1906 (34 Stats., 599).*

1892f. It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court having jurisdiction to naturalize aliens in the judicial district in which the naturalized citizen may reside at the time of bringing the suit, for the purpose of setting aside and canceling the certificate of citizenship on the ground of fraud or on the ground that such certificate of citizenship was illegally procured. In any such proceedings the party holding the certificate of citizenship alleged to have been fraudulently or illegally procured shall have sixty days personal notice in which to make answer to the petition of the United States; and if the holder of such certificate be absent from the United States or from the district in which he last had his residence, such notice shall be given by publication in the manner provided for the service of summons by publication or upon absentees by the laws of the State or the place where such suit is brought.

If any alien who shall have secured a certificate of citizenship under the provisions of this Act shall, within five years after the issuance of such certificate, return to the country of his nativity, or go to any other foreign country, and take permanent residence therein, it shall be considered prima facie evidence of a lack of intention on the part of such alien to become a permanent citizen of the United States at the time of filing his aplication for citizenship, and, in the absence of countervailing evidence, it shall be sufficient in the proper proceeding to authorize the cancellation of his certificate of citizenship as fraudulent, and the diplomatic and consular officers of the United States in foreign countries shall from time to time, through the Department of State, furnish the Department of Justice with the names of those within their respective jurisdictions who have such certificates of citizenship and who have taken permanent residence in the country of their nativity, or in any other foreign country, and such statements, duly certified, shall be admissible in evidence in all courts in proceedings to cancel certificates of citizenship.

Whenever any certificate of citizenship shall be set aside or canceled, as herein provided, the court in which such judgment or decree is rendered shall make an order canceling such certificate of citizenship and shall send a certified copy of such order to the Bureau of Immigration and Naturalization; and in case such certificate was not originally issued by the court making such order it shall direct the clerk of the court to transmit a copy of such order and judgment to the court out of which such certificate of citizenship shall have been originally issued. And it shall thereupon be the duty of the clerk of the court receiving such certified copy of the order and judgment of the court to enter the same of record and to cancel such original certificate of citizenship upon the records and to notify the Bureau of Immigration and Naturalization of such cancellation.

The provisions of this section shall apply not only to certificates of citizenship issued under the provisions of this Act, but to all certificates of citizenship which may have been issued heretofore by any court exercising jurisdiction in naturalization proceedings under prior laws. *Sec. 15, Act of June 29, 1906 (34 Stats., 601).*

1892g. Every person who falsely makes, forges, counterfeits, or causes or procures to be falsely made, forged, or counterfeited, or knowingly aids or assists in falsely making, forging, or counterfeiting any certificate of citizenship, with intent to use the same, or with the intent that the same may be used by some other person or persons, shall be guilty of a felony, and a person convicted of such offense shall be punished by imprisonment for not more than ten years, or by a fine of not more than ten thousand dollars, or by both such fine and imprisonment. *Sec. 16, Act of June 29, 1906 (34 Stats., 602).*

1892h. No person shall be prosecuted, tried, or punished for any crime arising under the provisions of this Act unless the indictment is found or the information is filed within five years next after the commission of such crime. *Sec. 24, Act of June 29, 1906 (34 Stats., 603).*

1892i. Any person who knowingly procures naturalization in violation of the provisions of this Act shall be fined not more than five thousand dollars, or shall be imprisoned not more than five years, or both, and upon conviction the court in which such conviction is had shall thereupon adjudge and declare the final order admitting such person to citizenship void. Jurisdiction is hereby conferred on the courts having jurisdiction of the trial of such offense to make such adjudication. Any person who knowingly aids, advises, or encourages any person not entitled thereto to apply for or to secure naturalization, or to file the preliminary papers declaring an intent to become a citizen of the United States, or who in any naturalization proceeding knowingly procures or gives false testimony as to any material fact, or who knowingly makes an affidavit false as to any material fact required to be proved in such proceeding, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both. *Sec. 23, Act of June 29, 1906 (34 Stats., 603).*

(These provisions take the place of similar provisions contained in paragraph 1892a, which is repealed by section 26 of the act above cited.)

1892j. For the purpose of the prosecution of all crimes and offenses against the naturalization laws of the United States which may have been committed prior to the date when this Act shall go into effect, the existing naturalization laws shall remain in full force and effect. *Sec. 25, Act of June 29, 1906 (34 Stats., 603).*

1892k. Sections twenty-one hundred and sixty-five, twenty-one hundred and sixty-seven, twenty-one hundred and sixty-eight, twenty-one hundred and seventy-three, of the Revised Statutes of the United States of America, and section thirty-nine of chapter one thousand and twelve of the Statutes at Large of the United States of America for the year nineteen hundred and three, and all Acts or parts of Acts inconsistent with or repugnant to the provisions of this Act are hereby repealed. *Sec. 26, Act of June 29, 1906 (34 Stats., 603).*

(This paragraph repeals paragraphs 1880, 1881, 1884, 1885, 1890, and 1892a.)

1892l. The Secretary of Commerce and Labor shall have power to make such rules and regulations as may be necessary for properly carrying into execution the various provisions of this Act. Certified copies of all papers, documents, certificates, and records required to be used, filed, recorded, or kept under any and all of the provisions of this Act shall be admitted in evidence equally with the originals in any and all proceedings under this Act and in all cases in which the originals thereof might be admissible as evidence. *Sec. 28, Act of June 29, 1906 (34 Stats., 606).*

1892m. All the applicable provisions of the naturalization laws of the United States shall apply to and be held to authorize the admission to citizenship of all persons not citizens who owe permanent allegiance to the United States, and who may become residents of any State or organized Territory of the United States, with the following modifications: The applicant shall not be required to renounce allegiance to any foreign sovereignty; he shall make his declaration of intention to become a citizen of the United States at least two years prior to his admission; and residence within the jurisdiction of the United States, owing such permanent allegiance, shall be regarded as residence within the United States within the meaning of the five years' residence clause of the existing law. *Sec. 30, Act of June 29, 1906 (34 Stats., 606).*

(See paragraph 1882.)

CHAPTER XXXIX.

THE EMPLOYMENT OF MILITARY FORCE.

NATIONAL QUARANTINE.

2068a. The Secretary of the Treasury shall have the control, direction, and management of all quarantine stations, grounds, and anchorages established by authority of the United States, and as soon as practicable after the approval of this Act shall select and designate such suitable places for them and establish the same at such points on or near the coast line of the United States or the border of the United States and a foreign country, as in his judgment are best suited for the same and necessary to prevent the introduction of yellow fever into the United States, and, in his discretion, he may also establish at the group of islands known as the Dry Tortugas, at the western end of the Florida reef, and at such other point or points on or near the coast line of the United States (not to exceed four in the aggregate) as he deems necessary, quarantine grounds, stations, and anchorages, whereat or whereto infected vessels bound for any port in the United States may be detained or sent for the purpose of being disinfected, having their cargos disinfected and discharged, if necessary, and their sick treated in hospitals until all danger of infection or contagion from such vessels, their cargoes, passengers, or crews has been removed. *Sec. 1, Act of June 19, 1906 (34 Stats., 299).*

2068b. In cases in which the title to the land and water so selected and designated is in the United States it shall be the duty of the department, bureau, or official of the United States having custody or possession of such land and water, or any part thereof, not used by the Government for other purposes designated by law, or possession of said Dry Tortugas Islands, on demand of the Secretary of the Treasury, to deliver the same into his custody and possession for the use of the Public Health and Marine-Hospital Service, evidencing such delivery by a suitable instrument in writing to be delivered to the Secretary of the Treasury. That in cases in which the title to such land and water, or any part thereof, is in any other owner than the United States it shall be the duty of the Secretary of the Treasury to secure the title and possession of the same to the United States for the use of the Public Health and Marine-Hospital Service of the United States, by purchase at a reasonable price, if possible; but if, in his judgment, the price demanded for such property be excessive, he is hereby authorized to apply to the Attorney-General of the United States to cause to be instituted, in the proper tribunal, condemnation proceedings in the name of the United States for the purpose of acquiring for the United States the title and possession of such land and water, and said Attorney-General shall, as soon as possible after such application by the Secretary of the Treasury, cause such proceedings to be instituted and conducted to a conclusion, and the custody and possession of such land and water, when duly acquired in accordance with the award made in such condemnation proceedings, shall be delivered to the Secretary of the Treasury for the use of the Public Health and Marine-Hospital Service. *Sec. 2, Act of June 19, 1906 (34 Stats., 299).*

2068c. Any vessel, or any officer of any vessel, or other person other than State health or quarantine officers, entering within the limits of any quarantine grounds and anchorages, or any quarantine station and anchorage, or departing therefrom, in disregard of the quarantine rules and regulations or without the permission of the officer in charge of such quarantine ground and anchorage, or of such quarantine station and anchorage, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than three hundred dollars or by imprisonment for not more than one year, or both, in the discretion of the court. That any master or owner of any vessel violating any provision of this Act, or any provision of an Act entitled "An Act granting additional powers and imposing additional duties on the Marine-Hospital Service," approved February fifteenth, eighteen hundred and ninety-three, or violating any rule or regulation made in accordance with this Act or said Act of February fifteenth, eighteen hundred and ninety-three, relating to the inspection of vessels, or to the prevention of the introduction of contagious or infectious diseases into the United States, or any master, owner, or agent of any vessel making a false statement relative to the sanitary condition of such vessel or its contents, or as to the health of any passenger or person thereon shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than five hundred dollars or imprisonment for not more than one year, or both, in the discretion of the court. *Sec. 4, Act of June 19, 1906 (34 Stats., 300).*

EXTRADITION.

2093a. The provisions of section ten hundred and fourteen of the Revised Statutes,[1] so far as applicable, shall apply throughout the United States for the arrest and removal therefrom to the Philippine Islands of any fugitive from justice charged with the commission of any crime or offense against the United States within the Philippine Islands, and shall apply within the Philippine Islands for the arrest and removal therefrom to the United States of any fugitive from justice charged with the commission of any crime or offense against the United States. Such fugitive may, by any judge or magistrate of the Philippine Islands, and agreeably to the usual mode of process against offenders therein, be arrested and imprisoned, or bailed, as the case may be, pending the issuance of a warrant for his removal to the United States, which warrant it shall be the duty of a judge of the court of first instance seasonably to issue, and of the officer or agent of the United States designated for the purpose to execute. Such officer or agent, when engaged in executing such warrant without the Philippine Islands, shall have all the powers of a marshal of the United States so far as such powers are requisite for the prisoner's safe-keeping and the execution of the warrant. *Sec. 1, Act of February 9, 1903 (32 Stats., 806).*

2093b. The provisions of sections fifty-two hundred and seventy-eight and fifty-two hundred and seventy-nine of the Revised Statutes,[1] so far as applicable, shall apply to the Philippine Islands, which, for the purposes of said sections, shall be deemed a Territory within the meaning thereof. *Sec. 2, Act of February 9, 1903 (32 Stats., 807).*

---

[1] SEC. 1014, R. S. For any crime or offense against the United States, the offender may, by any justice or judge of the United States, or by any commissioner of a circuit court to take bail, or by any chancellor, judge of a supreme or superior court, chief or first judge of common pleas, mayor of a city, justice of the peace, or other magistrate, of any State where he may be found, and agreeably to the usual mode of process against offenders in such State; and at the expense of the United States, be arrested and imprisoned, or bailed, as the case may be, for trial before such court of the United States as by law has cognizance of the offense. Copies of the process shall be returned as speedily as may be into the clerk's office of such court, together with the recognizances of the witnesses for their appearance to testify in the case. And where any offender or witness is committed in any district other than that where the offense is to be tried, it shall be the duty of the judge of the district where such offender or witness is imprisoned, seasonably to issue, and of the marshal to execute, a warrant for his removal to the district where the trial is to be had.

2093c. The provisions of sections fifty-two hundred and seventy, fifty-two hundred and seventy-one, fifty-two hundred and seventy-two, fifty-two hundred and seventy-three, fifty-two hundred and seventy-four, fifty-two hundred and seventy-five, fifty-two hundred and seventy-six, and fifty-two hundred and seventy-seven of the Revised Statutes (as amended by the Act approved August third, eighteen hundred and eighty-two), so far as applicable, shall apply to the Philippine Islands for the arrest and removal therefrom of any fugitives from justice charged with the commission within the jurisdiction of any foreign government of any of the crimes provided for by treaty between the United States and such foreign nation, and for the delivery by a foreign government of any person accused of crime committed within the jurisdiction of the Philippine Islands. Such fugitive from justice of a foreign country may, upon warrant duly issued by any judge or magistrate of the Philippine Islands, and agreeably to the usual mode of process against offenders therein, be arrested and brought before such judge or magistrate, who shall proceed in the matter in accordance with the provisions of the Revised Statutes hereby made applicable to the Philippine Islands: *Provided*, That for the purposes of this section the order or warrant for delivery of a person committed for extradition prescribed by section fifty-two hundred and seventy-two of the Revised Statutes shall be issued by the governor of the Philippine Islands under his hand and seal of office, and not by the Secretary of State.

Sec. 2. That the provisions of sections fifty-four hundred and nine and fifty-four hundred and ten of the Revised Statutes are hereby made applicable to proceedings in extradition from the Philippine Islands, either to the United States under an Act entitled "An Act to provide for the removal of persons accused of crime to and from the Philippine Islands for trial," approved February ninth, nineteen hundred and three, or to foreign countries under the provisions of this Act. *Secs. 1 and 2, Act of February 6, 1905* (*33 Stats., 698*).

---

[1] Sec. 5278, R. S. Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State or Territory, to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, it shall be the duty of the executive authority of the State or Territory to which such person has fled to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within six months from the time of the arrest, the prisoner may be discharged. All costs of expenses incurred in the apprehending, securing, and transmitting such fugitive to the State or Territory making such demand, shall be paid by such State or Territory.

Sec. 5279, R. S. Any agent so appointed who receives the fugitive into his custody, shall be empowered to transport him to the State or Territory from which he has fled. And every person who, by force, sets at liberty or rescues the fugitive from such agent while so transporting him, shall be fined not more than five hundred dollars or imprisoned not more than one year.

(This paragraph makes applicable to the Philippine Islands paragraphs 2090–2092.)

RESTRICTION UPON THE USE OF MILITARY FORCE.

2103a. From and after the passage of this act it shall not be lawful to employ any part of the Army of the United States, as a posse comitatus, or otherwise, for the purpose of executing the laws, except in such cases and under such circumstances as such employment of said force may be expressly authorized by the Constitution or by act of Congress; and no money appropriated by this act shall be used to pay any of the expenses incurred in the employment of any troops in violation of this section and any person wilfully violating the provisions of this section shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by fine not exceeding ten thousand dollars or imprisonment not exceeding two years or by both such fine and imprisonment. *Sec. 15, Act of June 18, 1878* (*20 Stats., 152*).

(This paragraph takes the place of paragraph 2103, from which a portion of the text was omitted.)

THE LAW OF WAR—MILITARY OCCUPATION.

2112a. The action of the President of the United States heretofore taken by virtue of the authority vested in him as Commander in Chief of the Army and Navy, as set forth in his order of July twelfth, eighteen hundred and ninety-eight, whereby a tariff of duties and taxes as set forth by said order was to be levied and collected at all ports and places in the Philippine Islands upon passing into the occupation and possession of the forces of the United States, together with the subsequent amendments of said order, are hereby approved, ratified, and confirmed, and the actions of the authorities of the government of the Philippine Islands, taken in accordance with the provisions of said order and subsequent amendments, are hereby approved: *Provided*, That nothing contained in this section shall be held to amend or repeal an Act entitled "An Act temporarily to provide revenue for the Philippine Islands, and for other purposes," approved March eight, nineteen hundred and two. *Sec. 2, Act of July 1, 1902* (*32 Stats., 692*).

2112b. The President of the United States, during such time as and whenever the sovereignty and authority of the United States encounter armed resistance in the Philippine Islands, until otherwise provided by Congress, shall continue to regulate and control commercial intercourse with and within said Islands by such general rules and regulations as he, in his discretion, may deem most conducive to the public interests and the general welfare. *Sec. 3, Act of July 1, 1902 (32 Stats., 692).*

CHAPTER XL.

PENSIONS.

THE GENERAL PENSION LAW.

2125a. From and after the passage of this Act all persons on the pension roll, and all persons hereafter granted a pension, who, while in the military or naval service of the United States and in the line of duty, shall have lost both eyes, or who have become totally blind from causes occurring in the service of the United States, shall receive a pension at the rate of one hundred dollars per month: *Provided, however*, That this Act shall not be so construed as to reduce any pension under any Act, public or private. *Act of April 8, 1904 (33 Stats., 163).*

(This paragraph amends paragraph 2125.)

2131a. From and after the passage of this Act all persons on the pension roll, and all persons hereafter granted a pension, who, while in the military or naval service of the United States and in the line of duty, shall have lost one hand or one foot, or been totally disabled in the same, shall receive a pension at the rate of forty dollars per month; that all persons who, in like manner, shall have lost an arm at or above the elbow or a leg at or above the knee, or been totally disabled in the same, shall receive a pension at the rate of forty-six dollars per month; that all persons who, in like manner, shall have lost an arm at the shoulder joint or a leg at the hip joint, or so near the shoulder or hip joint or where the same is in such a condition as to prevent the use of an artificial limb, shall receive a pension at the rate of fifty-five dollars per month, and that all persons who, in like manner, shall have lost one hand and one foot, or been totally disabled in the same, shall receive a pension at the rate of sixty dollars per month; and that all persons who, in like manner, shall have lost both feet shall receive a pension at the rate of one hundred dollars per month: *Provided, however*, That this Act shall not be so construed as to reduce any pension under any act, public or private. *Act of March 2, 1903 (32 Stats., 944).*

(This paragraph amends paragraph 2131.)

2136a. The investigation of claims for the reimbursement of expenses of the last sickness and burial of deceased pensioners shall be at the instance and under the direction of the Secretary of the Treasury, and no part of any accrued pension shall hereafter be used to reimburse any State, county, or municipal corporation for expenses incurred by such State, county, or municipal corporation under State law for expenses of the last sickness or burial of a deceased pensioner. *Act of March 3, 1903* (*32 Stats., 1111*).

DEPENDENT RELATIVES.

2149a. Section forty-seven hundred and eight of the laws of the United States governing the granting of army and navy pensions, is amended to read as follows:

"SEC. 4708. The remarriage of any widow, dependent mother, or dependent sister entitled to pension shall not bar her right to such pension to the date of her remarriage, whether an application therefor was filed before or after such marriage; but on the remarriage of any widow, dependent mother, or dependent sister having a pension such pension shall cease: *Provided, however*, That any widow who was the lawful wife of any officer or enlisted man or other person in the Army, Navy, or Marine Corps of the United States, as described in paragraphs one, two, and three of section forty-six hundred and ninety-three of the Revised Statutes of the United States, during the period of his service in any war, and whose name was placed or shall hereafter be placed on the pension roll because of her husband's death as the result of wound or injury received or disease contracted in such military or naval service, and whose name has been or shall hereafter be dropped from said pension roll by reason of her marriage to another person who has since died or shall hereafter die, or from whom she has been heretofore or shall be hereafter divorced, upon her own application and without fault on her part, and if she is without means of support other than her daily labor, as defined by the Acts of June twenty-seventh, eighteen hundred and ninety, and May ninth, nineteen hundred, shall be entitled to have her name again placed on the pension roll at the rate now provided for widows by the Acts of July fourteenth, eighteen hundred and sixty-two, March third, eighteen hundred and seventy-three, and March nineteenth, eighteen hundred and eighty-six, such pension to commence from the date of the filing of her application in the Pension Bureau after the approval of this Act: *And provided further*, That where such widow is already in receipt of a pension from the United States she shall not be entitled to restoration under this Act: *And provided further*, That where the pension of said widow on her second or subsequent marriage has accrued to a helpless or idiotic child, or a child or children under the age of sixteen years, she shall not be entitled to restoration under this Act unless said helpless or idiotic child, or child or children under sixteen years of age, be then a member or members of her family and cared for by her, and upon the restoration of said widow the payment of pension to said child or children shall cease." *Sec. 1, Act of February 28, 1903 (32 Stats., 920).*

(This paragraph takes the place of paragraph 2149.)

2149b. The provisions of this Act shall be extended to those widows otherwise entitled whose husbands died of wounds, injuries, or disease contracted during the period of their military and naval service, but who were deprived of pension under the Act of March third, eighteen hundred and sixty-five, because of their failure to draw any pension by reason of their remarriage. *Sec. 2, Act of February 28, 1903 (32 Stats., 921).*

THE DEPENDENT PENSION LAW.

2151a. Any person who served ninety days or more in the military or naval service of the United States during the late civil war or sixty days in the war with Mexico, and who has been honorably discharged therefrom, and who has reached the age of sixty-two years or over, shall, upon making proof of such facts according to such rules and regulations as the Secretary of the Interior may provide, be placed upon the pension roll, and be entitled to receive a pension as follows: In case such person has reached the age of sixty-two years, twelve dollars per month; seventy years, fifteen dollars per month; seventy-five years or over, twenty dollars per month; and such pension shall commence from the date of the filing of the application in the Bureau of Pensions after the passage and approval of this Act: *Provided*, That pensioners who are sixty-two years of age or over, and who are now receiving pensions under existing laws, or whose claims are pending in the Bureau of Pensions, may, by application to the Commissioner of Pensions in such form as he may prescribe, receive the benefits of this Act; and nothing herein contained shall prevent any pensioner or person entitled to a pension from prosecuting his claim and receiving a pension under any other general or special Act: *Provided*, That no person shall receive a pension under any other law at the same time or for the same period that he is receiving a pension under the provisions of this Act: *Provided further*, That no person who is now receiving or shall hereafter receive a greater pension under any other general or special law than he would be entitled to receive under the provisions herein shall be pensionable under this Act.

Sec. 2. That rank in the service shall not be considered in applications filed hereunder.

Sec. 3. That no pension attorney, claim agent, or other person shall be entitled to receive any compensation for services rendered in presenting any claim to the Bureau of Pensions, or securing any pension, under this Act. *Act of February 6, 1907 (34 Stats., 879).*

(See paragraphs 2166 and 2166a.)

2151b. The benefits of the Act of February sixth, nineteen hundred and seven, entitled "An Act granting pensions to certain enlisted men, soldiers, and officers who served in the civil war and the war with Mexico," are hereby extended to include any person who served the period of time therein specified during the late civil war or in the war with Mexico and who is now or may hereafter become entitled to pension under the Acts of June twenty-seventh, eighteen hundred and ninety, February fifteenth, eighteen hundred and ninety-five, and the joint resolution of July first, nineteen hundred and two, or the Acts of January twenty-ninth, eighteen hundred and eighty-seven, March third, eighteen hundred and ninety-one, and February seventeenth, eighteen hundred and ninety-seven. *Act of March 4, 1907 (34 Stats., 1406).*

(See paragraphs 2166, 2166*a*, and 2151*a*.)

2151c. Hereafter the age of sixty-two years and over shall be considered a permanent specific disability within the meaning of the pension laws. *Act of March 4, 1907 (34 Stats., 1406).*

(See paragraph 2151.)

2154a. The Act approved June twenty-seventh, eighteen hundred and ninety, entitled "An Act granting pensions to soldiers and sailors who are incapacitated for the performance of manual labor, and providing for pensions to widows, minor children, and dependent parents," is construed and held to include all persons and the widows and minor children of all deceased persons, subject to the limitations of said Act, who served for ninety days in the military or naval service of the United States during the late war of the rebellion, and who have been honorably discharged therefrom, and section forty-seven hundred and sixteen, Revised Statutes United States, is amended accordingly: *Provided, however*, That the foregoing shall not apply to those who served in the First, Second, Third, Fourth, Fifth, and Sixth regiments United States Volunteer Infantry who had a prior service in the Confederate army or navy and who enlisted in said regiments while confined as prisoners of war under a stipulation that they were not to be pensionable under the laws of the United States, nor to those who, having had such prior service, enlisted in the military or naval service of the United States after the first day of January, eighteen hundred and sixty-five. *Sec. 1, Act of July 1, 1902 (32 Stats., 750).*

(This paragraph amends paragraph 2227.)

MEXICAN WAR PENSIONS.

2166a. The Secretary of the Interior is hereby authorized and directed to place on the pension roll, at the rate of twelve dollars per month, all Mexican war survivors now on the roll, or who may hereafter be placed on the roll, under the Acts of January twenty-ninth, eighteen hundred and eighty-seven, March third, eighteen hundred and ninety-one, and February fifth, eighteen hundred and ninety-seven. *Act of March 3, 1903 (32 Stats., 1228).*

PENSIONS FOR INDIAN WARS, 1832–1842.

2167a. The provisions, limitations, and benefits of the Act entitled "An Act granting pensions to survivors of the Indian wars of eighteen hundred and thirty-two to eighteen hundred and forty-two, inclusive, known as the Black Hawk war, Creek war, Cherokee disturbances, and the Seminole war," approved July twenty-seventh, eighteen hundred and ninety-two, be, and the same are hereby, extended, from the date of the passage of this Act, to the surviving officers and enlisted men, including marines, militia, and volunteers of the military and naval service of the United States who served for thirty days or more and were honorably discharged under the United States military, State, Territorial, or provisional authorities in the Florida and Georgia Seminole Indian war of eighteen hundred and seventeen and eighteen hundred and eighteen; the Fevre River Indian war of Illinois of eighteen hundred and twenty-seven; the Sac and Fox Indian war of eighteen hundred and thirty-one; the Sabine Indian disturbances of eighteen hundred and thirty-six and eighteen hundred and thirty-seven; the Cayuse Indian war of eighteen hundred and forty-seven and eighteen hundred and forty-eight, on the Pacific coast; the Florida wars with the Seminole Indians, from eighteen hundred and forty-two to eighteen hundred and fifty-eight, inclusive; the Texas and New Mexico Indian war of eighteen hundred and forty-nine to eighteen hundred and fifty-six; the California Indian disturbances of eighteen hundred and fifty-one and eighteen hundred and fifty-two; the Utah Indian disturbances of eighteen hundred and fifty to eighteen hundred and fifty-three, inclusive, and the Oregon and Washington Territory Indian wars from eighteen hundred and fifty-one to eighteen hundred and fifty-six, inclusive; and also to include the surviving widows of such officers and enlisted men: *Provided*, That such widows have not remarried. *Act of June 27, 1902 (32 Stats., 399).*

(See paragraph 2167.)

2167b. Where there is no record of enlistment or muster into the service of the United States in any of the wars mentioned in this Act the record of pay by the United States shall be accepted as full and satisfactory proof of such enlistment and service. *Act of June 27, 1902 (32 Stats., 399).*

DECLARATION AND EVIDENCE IN PENSION CASES.

2201a. In the administration of the pension laws any enlisted man of the Army, including regulars, volunteers, and militia, or any appointed or enlisted man of the Navy or Marine Corps, who was honorably discharged from the last contract of service entered into by him during the late war of the rebellion, shall be held and considered to have been honorably discharged from all similar contracts of service previously entered into by him with the United States during said war: *Provided*, That such enlisted or appointed man served not less than six months under said last enlistment or appointment, that his entire service under said last enlistment or appointment was faithful, and that he did not receive by reason of said last enlistment or appointment any bounty or gratuity other than from the United States in excess of that to which he would have been entitled if he had continued to serve faithfully until honorably discharged under any contract of service previously entered into by him, either in the Army, Navy, or Marine Corps, during the war of the rebellion. *Sec. 2, Joint Res. of July 1, 1902 (32 Stats., 750).*

2201b. In the administration of the pension laws any enlisted man or commissioned officer of the Army, including regulars, volunteers, and militia, or any appointed or enlisted man or commissioned officer of the Navy or Marine Corps, who was honorably discharged from any subsequent contract of service entered into by him during the late war of the rebellion, shall be held and considered to have been honorably discharged from all previous contracts of service as commissioned officer or enlisted man previously entered into by him with the United States during said war: *Provided*, That such enlisted or appointed man or commissioned officer served not less than six months under any subsequent enlistment, appointment, or commission; that his entire service under any said subsequent enlistment, appointment, or commission was faithful, and that he did not receive by reason of said enlistment, appointment, or commission any bounty or gratuity other than from the United States in excess of that to which he would have been entitled if he had continued to serve faithfully until honorably discharged under any contract of service previously entered into by him, either in the Army, Navy, or Marine Corps, during the war of the rebellion. *Joint Res. of June 28, 1906 (34 Stats., 836)*.

(This paragraph amends section 2 of the joint resolution of July 1, 1902, and takes the place of paragraph 2201a.)

ATTORNEYS' FEES.

2203a. No pension attorney, claim agent, or other person shall be entitled to receive any compensation for services rendered in securing the introduction of a bill or the passage thereof through Congress granting pension or increase of pension; and any person who shall, directly or indirectly, contract for, demand, receive, or retain any compensation for such services shall be deemed guilty of an offense, and upon conviction thereof shall, for each and every such offense, be fined not exceeding five hundred dollars or imprisoned not exceeding two years, or both, in the discretion of the court. *Act of March 4, 1907 (34 Stats., 1407)*.

CHAPTER XLI.

THE SOLDIERS' HOME.

BOARD OF COMMISSIONERS.

2263a. The chief of the Military Secretary's Department shall be a member of the Board of Commissioners of the United States Soldiers' Home. *Act of April 23, 1904 (33 Stats., 263)*.

CHAPTER XLII.

THE NATIONAL HOME FOR DISABLED VOLUNTEER SOLDIERS.

OFFICERS OF THE BRANCHES OF THE NATIONAL HOME.

2298a. Hereafter the officers of the National Home for Disabled Volunteer Soldiers, and officers under the Board of Managers thereof, shall be appointed, so far as may be practicable, from persons whose military or naval service would render them eligible, if disabled and not otherwise provided for, for admission to the Home, and they may be appointed, removed, and transferred, from time to time, as the interests of the institution may require, by the Board of Managers. *Act of June 28, 1902 (32 Stats., 472)*.

(This paragraph amends paragraph 2298.)

ACCOUNTS.

2316a. At the Central Branch, at Dayton, Ohio: For current expenses, namely: Pay of officers and noncommissioned officers of the Home, with such exceptions as are hereinafter noted, and their clerks and orderlies; also payments for chaplains and religious instruction, printers, bookbinders, librarians, musicians, telegraph and telephone operators, guards, policemen, watchmen, and fire company; for all property and materials purchased for their use, including repairs not done by the Home; for necessary expenditures for articles of amusement, boats, library books, magazines, papers, pictures, and musical instruments, and for repairs not done by the Home; and for stationery, advertising, legal advice, for payments due heirs of deceased members: *Provided*, That all receipts on acount of the effects of deceased members during the fiscal year shall be also available for such payments; and for such other expenditures as can not properly be included under other heads of expenditure, sixty thousand dollars. *Act of April 28*, *1904* (*33 Stats.*, *500*).

(This paragraph relates to the sundry civil appropriation act for the fiscal year ending June 30, 1905, and is a reenactment of previous legislation on the subject.)

STATE AND TERRITORIAL HOMES.

2321a. No part of this appropriation shall be apportioned to any State or Territorial Home until its laws, rules, or regulations respecting the pensions of its inmates be made to conform to the provisions of section four of an Act approved March third, eighteen hundred and eighty-three, entitled "An Act prescribing regulations for the Soldiers' Home located at Washington, in the District of Columbia, and for other purposes;" but the above proviso shall not apply to any State or Territorial Home into which the wives or widows of soldiers are admitted and maintained. *Act of April 28*, *1904* (*33 Stats.*, *504*).

(This paragraph relates to the sundry civil appropriation for the fiscal year ending June 30, 1905. See paragraphs 2263–2266, 2268, 2272–2274, 2279, 2281, 2284, and 2285.)

2324a. No part of this appropriation shall be apportioned to any State or Territorial Home that maintains a bar or canteen where intoxicating liquors are sold. *Act of April 28*, *1904* (*33 Stats.*, *504*).

(This provision appears for the first time in the annual appropriation for sundry civil expenses, of April 28, 1904, and is inserted here because it is probable it will become a part of the annual legislation for these Homes.)

2324b. One-half of any sum or sums retained by State Homes on account of pensions received from inmates shall be deducted from the aid herein provided for. *Act of March 3*, *1905* (*33 Stats.*, *1227*).

PENSIONS TO INMATES.

2328a. Any balance of pension money due a member of the National Home for Disabled Volunteer Soldiers at the time of his death shall be paid to his widow, minor children or dependent mother or father in the order named, and should no widow, minor child, or dependent parent be discovered within one year from the time of the death of the pensioner, said balance shall be paid to the post fund of the Branch of said National Home of which the pensioner was a member at the time of his death, to be used for the common benefit of the members of the Home under the direction of the Board of Managers, subject to future reclamation by the relatives hereinbefore designated, upon application filed with the Board of Managers within five years after the pensioner's death. *Act of July 1, 1902* (*32 Stats., 564*).

(See paragraph 2328.)

CHAPTER XLIII.

THE GOVERNMENT HOSPITAL FOR THE INSANE.

ADMISSIONS.

2347a. The proviso in the Act approved August seventh, eighteen hundred and eighty-two, appearing on page three hundred and thirty of the Twenty-second Statutes at Large, and relating to pensions of inmates of the Government Hospital for the Insane, is hereby stricken out and the following inserted:

"*Provided*, That in addition to the persons now entitled to admission to said hospital, any inmate of the National Home for Disabled Volunteer Soldiers who is now or may hereafter become insane shall, upon an order of the president of the Board of Managers of the said National Home, be admitted to said hospital and treated therein. During the time that any pensioner shall be an inmate of the Government Hospital for the Insane all money due or becoming due upon his or her pension shall be paid by the pension agent to the superintendent of the hospital, upon a certificate by such superintendent that the pensioner is an inmate of the hospital and is living, and such pension money shall be by said superintendent disbursed and used, under regulations to be prescribed by the Secretary of the Interior, for the benefit of the pensioner, and, in the case of a male pensioner, his wife, minor children, and dependent parents, or, if a female pensioner, her minor children, if any, in the order named, and to pay his or her board and maintenance in the hospital; the remainder of such pension money, if any, to be placed to the credit of the pensioner and to be paid to the pensioner or the guardian of the pensioner in the event of his or her discharge from the hospital; or, in the event of the death of said pensioner while an inmate of said hospital, shall, if a female pensioner, be paid to her minor children, and, in the case of a male pensioner, to be paid to his wife, if living; if no wife survives him, then to his minor children; and in case there is no wife nor minor children, then the said unexpended balance to his or her credit shall be applied to the general uses of said hospital: *Provided further*, That in the case of pensioners transferred to the hospital from the National Home for Disabled Volunteer Soldiers, any pension money to his credit at said Home at the time of his said transfer shall be transferred with him to said hospital and placed to his credit therein, to be expended as hereinbefore provided; and in case of his return from said hospital to the Home, any balance to his credit at said hospital shall, in like manner, be transferred to said Home, to be expended in accordance with the rules established in regard thereto. This provision shall also be applicable to all unexpended pension money heretofore paid to the officers of the said hospital on account of pensioners who were but are not now inmates thereof."[1] *Act of February 20, 1905 (33 Stats., 731).*

(This paragraph takes the place of paragraph 2347.)

2347b. In addition to the persons now entitled to admission to the Government Hospital for the Insane, any inmate of the Soldiers' Home who is now or may hereafter become insane shall, upon an order of the president of the Board of Commissioners of the Soldiers' Home, be admitted to said hospital and treated therein; and the expenses of maintaining any such person shall be paid from the Soldiers' Home fund. *Act of July 7, 1884 (23 Stats., 213).*

2348a. The Secretary of War may, in his discretion, contract for the care, maintenance, and treatment of the insane natives of the Philippine Islands serving in the Army of the United States at any asylum in the Philippine Islands in all cases which he is now authorized by law to cause to be sent to the Government Hospital for the Insane in the District of Columbia. *Act of March 2, 1907 (34 Stats., 1173).*

(See paragraphs 2340–2348.)

---

[1] Under the provisions of the Act of February 20, 1905 (33 Stats., 731), the regulations established by the Secretary of the Interior fix the amount to be charged to any pensioner for support in the Government Hospital for the Insane at not to exceed $6.66 per month.

In regard to the general status of pensioners committed to the Government Hospital for the Insane see Logue *v.* Fenning (29 Appeal Cases, Dist. of Col., 519–530).

CHAPTER XLIV.

NATIONAL PARKS.

THE GETTYSBURG NATIONAL PARK.

ERECTION OF MONUMENTS.

2391a. The Gettysburg National Park Commission are authorized and directed, under the supervision of the Secretary of War, to erect such monuments and markers of granite and bronze upon the battlefield of Gettysburg, in the State of Pennsylvania, as will fittingly designate the positions, indicate the movements, and commemorate the valorous services of the following batteries and regiments of United States Regulars upon the battlefield: Batteries E, G, H, I, and K, First United States Artillery; A, B, D, G, L, and M, Second United States Artillery; C, F, and K, Third United States Artillery; A, B, C, F, G, and K, Fourth United States Artillery; C, D, F, I, and K, Fifth United States Artillery; Second, Third, Fourth, Sixth, Seventh, Eighth, Tenth, Eleventh, Twelfth, Fourteenth, and Seventeenth Regiments of United States Infantry; First, Second, Fifth, and Sixth Regiments of Cavalry; and United States Engineers Detachment.

The Secretary of War shall, so far as practicable, procure the appointment of committees of the survivors of these regiments and batteries, with whom the said commission shall consult, and, with the approval of the Secretary of War, determine the designs and positions of said monuments and markers and the inscriptions they shall bear, and for the purpose of carrying out the provisions of this act, sixty-one thousand five hundred dollars is hereby appropriated, out of any moneys not otherwise appropriated, and the disbursements under this act shall be made on the approval of the Secretary of War. *Act of February 18, 1903* (*32 Stats., 838*).

2391b. The Act of Congress authorizing the Secretary of War to cause to be erected monuments and markers on the battlefield of Gettysburg, in the State of Pennsylvania, to commemorate the valorous deeds of certain regiments and batteries of the United States Army, approved the eighteenth of February, nineteen hundred and three, be, and hereby is, amended by adding to the names of batteries therein mentioned Battery E, Fourth United States Artillery. And for the purpose of carrying out the provisions of said Act as hereby amended the sum of one thousand five hundred dollars is hereby appropriated out of any money not otherwise appropriated. *Act of March 3, 1905* (*33 Stats., 980*).

(This paragraph amends paragraph 2391a.)

THE ANTIETAM BATTLEFIELD.

2422a. For pay of superintendent of Antietam battlefield, said superintendent to perform his duties under the direction of the Quartermaster's Department and to be selected and appointed by the Secretary of War, at his discretion, the person selected and appointed to this position to be an honorably discharged Union soldier, one thousand five hundred dollars. *Act of April 28, 1904* (*33 Stats., 496*).

(This paragraph amends paragraph 2422.)

THE YELLOWSTONE NATIONAL PARK.

2443a. Private parties or companies doing business in the Yellowstone National Park under authority from the Government may be permitted, in the discretion of the Secretary of War, to use electricity furnished by the electric lighting and power plant of Fort Yellowstone and Mammoth Hot Springs at actual cost to the Government for operation, maintenance, and depreciation of the plant and ten per centum additional, under such regulations as may be prescribed by the Secretary of War. *Act of March 3, 1903* (*32 Stats., 1130*).

STATUE OF LIBERTY, BEDLOES ISLAND.

2447a. The Treasurer of the United States is hereby authorized and directed to receive the sum of thirty-five thousand dollars, more or less, from the executive committee of the Statue of Liberty erected on land belonging to the United States on Bedloes Island, New York Harbor; and the Secretary of War is hereby authorized to keep the said statue in repair, and to pay for the same from the appropriation for "Regular supplies," under the Quartermaster's Department, in the appropriation for the support of the Army for the fiscal year in which such expenses shall be incurred. *Act of April 28, 1904* (*33 Stats., 498*).

CHAPTER XLV.

NATIONAL CEMETERIES.

INTERMENTS.

2460a. For expenses of burying in the Arlington National Cemetery, or in the cemeteries of the District of Columbia, indigent ex-Union soldiers, sailors, and marines of the late civil war and soldiers and sailors of the war with Spain who die in the District of Columbia, or in the immediate vicinity thereof, and of such soldiers, sailors, and marines who die in the District of Columbia and are buried in the immediate vicinity thereof, to be disbursed by the Secretary of War, at a cost not exceeding forty-five dollars for such burial expenses in each case, exclusive of cost of grave, three thousand dollars. *Act of April 28, 1904 (33 Stats., 495).*

(This paragraph amends paragraph 2460 and the note thereto.)

ROADWAYS.

2465a. No part of this sum shall be used for repairing any roadway within the corporate limits of any city, town, or village. *Act of April 28, 1904 (33 Stats., 495).*

CHAPTER XLVIII.

General Staff Corps.

ESTABLISHMENT.

2470. There is hereby established a General Staff Corps, to be composed of officers detailed from the Army at large, under such rules as may be prescribed by the President. *Sec. 1, Act of February 14, 1903 (32 Stats., 830).*

COMPOSITION.

2471. The General Staff Corps shall consist of one Chief of Staff and two general officers, all to be detailed by the President from officer of the Army at large not below the grade of brigadier-general; four colonels, six lieutenant-colonels, and twelve majors, to be detailed from the corresponding grades in the Army at large, under such rules for selection as the President may prescribe; twenty captains, to be detailed from officers of the Army at large of the grades of captain or first lieutenant, who while so serving shall have the rank, pay, and allowances of captain mounted. All officers detailed in the General Staff Corps shall be detailed therein for periods of four years, unless sooner relieved. While serving in the General Staff Corps, officers may be temporarily assigned to duty with any branch of the Army. Upon being relieved from duty in the General Staff Corps, officers shall return to the branch of the Army in which they hold permanent commission, and no officer shall be eligible to a further detail in the General Staff Corps until he shall have served two years with the branch of the Army in which commissioned, except in case of emergency or in time of war. *Sec. 3, Act of February 14, 1903* (*32 Stats., 831*).

DUTIES.

2472. The duties of the General Staff Corps shall be to prepare plans for the national defense and for the mobilization of the military forces in time of war; to investigate and report upon all questions affecting the efficiency of the Army and its state of preparation for military operations; to render professional aid and assistance to the Secretary of War and to general officers and other superior commanders, and to act as their agents in informing and coordinating the action of all the different officers who are subject under the terms of this Act to the supervision of the Chief of Staff; and to perform such other military duties not otherwise assigned by law as may be from time to time prescribed by the President. *Sec. 2, Act of February 14, 1903* (*32 Stats., 831*).

2473. The Chief of Staff, under the direction of the President or of the Secretary of War, under the direction of the President, shall have supervision of all troops of the line and of the Adjutant-General's, Inspector-General's, Judge-Advocate's, Quartermaster's, Subsistence, Medical, Pay and Ordnance departments, the Corps of Engineers, and the Signal Corps, and shall perform such other military duties not otherwise assigned by law as may be assigned to him by the President. Duties now prescribed by statute for the Commanding General of the Army as a member of the Board of Ordnance and Fortification and of the Board of Commissioners of the Soldiers' Home shall be performed by the Chief of Staff or other officer designated by the President. Acts and parts of Acts authorizing aids-de-camp and military secretaries shall not apply to general officers of the General Staff Corps. *Sec. 4, Act of February 14, 1903* (*32 Stats., 831*).

CHIEF OF ARTILLERY.

2474. Section five of the Act entitled "An Act to increase the efficiency of the Army," approved February fourteenth, nineteen hundred and three, is hereby amended to read as follows:

" Sec. 5. That the Chief of Artillery shall hereafter serve as an additional member of the General Staff, and by and with the advice and consent of the Senate shall have the rank, pay, and allowances of a brigadier-general, and when the next vacancy occurs in the office of colonel of artillery it shall not be filled, and thereafter the number of colonels of artillery shall not exceed thirteen; and the provisions of the foregoing sections of this Act shall take effect on August fifteenth, nineteen hundred and three." *Act of March 3, 1903* (*32 Stats., 1021*).

2474a. The Chief of Artillery or Chief of Coast Artillery shall be an additional member of the General Staff Corps, and his other duties shall be prescribed by the Secretary of War.

When a vacancy occurs in the office of the Chief of Artillery or Chief of Coast Artillery the President may appoint to such vacancy, by and with the advice and consent of the Senate, an officer selected from the coast artillery, who shall serve for a period of four years unless reappointed for further periods of four years; and any officer who shall hereafter serve as Chief of Artillery or Chief of Coast Artillery shall, when retired, be retired with the rank, pay, and allowances authorized by law for a brigadier-general on the retired list. The position vacated by an officer appointed Chief of Artillery or Chief of Coast Artillery shall be filled by promotion in that arm according to existing law, but the officer thus appointed shall continue in the same lineal position in his arm which he would have held if he had not been so appointed, and shall be an additional number in the grade from which he was appointed or to which he may be promoted: *Provided*, That there shall not be at any time in the coast artillery more than one additional officer by reason of the appointment of a Chief of Artillery or Chief of Coast Artillery and the relief of an officer from such duty. *Sec. 2, Act of January 25, 1907 (34 Stats., 861).*

(This paragraph amends paragraph 2474.)

CHAPTER XLIX.

PHILIPPINE ISLANDS—ACTS OF THE PHILIPPINE COMMISSION RELATING TO THE ARMY.

ATTORNEYS.

2475. Any officer of the United States Army designated by the commanding general of the Division of the Philippines for such purpose shall have the right to appear as attorney before any court in the Philippine Islands in all cases in which the United States Government shall have an interest direct or indirect. *Sec. 1, Act of the Philippine Commission of April 27, 1903 (No. 856).*

PROVOST COURTS.

2476. Section 78 of said Act is hereby amended so as to read as follows:

"SEC. 78. JURISDICTION OF PROVOST COURTS OVER CIVIL AND CRIMINAL ACTIONS REPEALED, WITH CERTAIN EXCEPTIONS, AND ACTIONS PENDING THEREIN TO BE TRANSFERRED.—All military orders, and all acts conferring upon Provost Courts in the Philippine Islands jurisdiction over civil actions and criminal actions, including criminal actions in admiralty, are hereby repealed, except as in this section hereinafter provided. All civil actions now pending in the Provost Courts are hereby transferred to the proper tribunal in which they would have been brought under the provisions of this act, had this act been in force at the time such actions were commenced, and the Supreme Court and Courts of First Instance and Courts of Justices of the Peace established by this act are authorized to try and determine the actions so transferred to them respectively from the Provost Courts, in the same manner and with the same legal effect as though such actions had originally been commenced in the courts created by virtue of this act: *Provided*, *however*, that the criminal jurisdiction of Provost Courts in any province or district exclusively under military control shall not be affected by this act, and Provost Courts in such provinces and districts shall have concurrent jurisdiction with the Courts of First Instance over criminal actions in admiralty." *Sec. 2*, *Act of the Philippine Commission of May 16*, *1902* (*No. 400*).

GENERAL COURTS-MARTIAL—CIVILIAN WITNESSES—FEES.

2477. Every person not belonging to the Army of the United States, who, in the Philippine Islands, being duly subpœnaed to appear therein as a witness before a general court-martial of said Army, willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or produce documentary evidence which such person may have been legally subpœnaed to produce, shall be punished by a fine of not more than five hundred dollars, United States currency, or imprisonment not to exceed six months, or both, at the discretion of the court, and it shall be the duty of the proper fiscal or prosecuting officer, on the certification of the facts to him by the general court-martial, to file in the proper court a complaint against and prosecute the person so offending: *Provided*, That one dollar and fifty cents, United States currency, for each day's attendance, and five cents, United States currency, per mile for going from his place of residence to the place of trial or hearing and five cents per mile for returning, shall be duly tendered to said witness: *Provided further*, That no witness shall be compelled to incriminate himself or to answer any question which may tend to incriminate him. *Sec. 1*, *Act of the Philippine Commission of April 28*, *1904* (*No. 1130*).

HABEAS CORPUS.

2478. Nothing in this chapter shall authorize the discharge of any person convicted of an offense or charged with an offense committed in any other part of the Philippine Islands, or in any part of the United States, and who, agreeable to law, ought to be delivered up to the executive power of the United States, or of any State thereof, where the offense is charged to have been committed; nor of any person suffering imprisonment under lawful judgment; nor shall any writ of habeas corpus be issued against a military officer or soldier who is detaining a prisoner in the Provinces of Batangas, La Laguna, Tayabas, Samar, Cebú and Bohol, and in any unorganized province or territory. It shall be a conclusive answer to a writ of habeas corpus against a military officer or soldier, and a sufficient excuse for not producing the prisoner in all other organized provinces than those herein named, if the Commanding General or any general officer in command of the department or district shall certify that the prisoner is held by him either:

"1. As a prisoner of war; or

"2. As a member of the Army, a civilian employé thereof, or a camp follower and subject to its discipline; but this paragraph shall not apply to pending cases; or

"3. As a prisoner committed by a military court or commission prior to October 1, 1901; or

"4. As a prisoner arrested and held for trial before a military court or commission before October 15, 1901, for a violation of the laws of war committed before the same date; or

"5. As a prisoner guilty of violations of the laws of war committed in the unpacified provinces and territory in this section named and who has escaped into provinces officially declared to be under civil control and has been there captured by military authorities and is held for trial for such violations of the laws of war."

All the other provisions of this chapter shall be subject to the limitations and restrictions contained in this section. *Sec. 1, Act of the Philippine Commission of October 1, 1901 (No. 272).*

2479. So much of section one of Act Numbered Two hundred and seventy-two, entitled "An Act amending Chapter XXVI, relating to proceedings in habeas corpus, of Act Numbered One hundred and ninety, providing for a code of procedure in civil actions and special proceedings," as forbids the issuing of any writ of habeas corpus against a military officer or soldier who is detaining a prisoner in the Provinces of Batangas, La Laguna, Tayabas, Samar, Cebu, and Bohol, or in any other province which has been organized under "The Provincial Government Act," or by a special Act, or which may be hereafter so organized, is hereby expressly repealed. *Sec. 4, Act of the Philippine Commission of June 23, 1902 (No. 421).*

JURISDICTION OVER RESERVATIONS.

2480. SECTION 1. No licenses shall be granted for the sale of or dealing in any intoxicating liquors on any public land reserved by the President of the United States for military purposes in the Philippine Islands.

Sec. 2. The military authorities shall have the right to reject [*eject*] any intruder or trespasser on any public lands reserved by the President for military purposes in the Philippine Islands, and to suppress open breaches of the peace and abate nuisances thereon.

Sec. 3. No branch of the Civil Government in force on or over any public lands reserved by the President for military purposes, and no civilian residents thereon, shall interfere with military administration or the use of such lands for military purposes.

Sec. 4. The personal property of persons employed in the military service of the United States in the Philippine Islands and used by them incident to said service shall be exempt from all taxation under the laws in force in said Islands.

Sec. 5. No mining claims shall be located by any person on any public lands reserved by the President for military purposes in the Philippine Islands.

Sec. 6. Every person who unlawfully cuts, or aids, or is employed in unlawfully cutting, or wantonly destroys, or procures to be wantonly destroyed, any timber standing upon lands of the United States, which in pursuance of law may be reserved or purchased for military purposes in the Philippine Islands, or removes any other public property, shall, upon conviction, be fined for each offense a sum not exceeding five hundred dollars, or be imprisoned for a period not exceeding twelve months, or both, in the discretion of the court.

Sec. 7. No arrest of any officer, soldier, or civilian employee, in the military service of the United States on any military reservation, camp, or barracks, shall be made except on warrant in due form in writing and served upon the commanding officer thereof.

Sec. 8. All laws or parts of laws in force in the Philippine Islands not inconsistent with military use of any public lands reserved by the President for military purposes shall be in full force and effect over said lands.

Sec. 9. The public good requiring the speedy enactment of this bill, the passage of the same is hereby expedited in accordance with section two of "An Act prescribing the order of procedure by the Commission in the enactment of laws," passed September twenty-sixth, nineteen hundred. *Secs. 1 to 9, Act of the Philippine Commission of November 24, 1902 (No. 530).*

SALES OF LIQUOR.

2481. Section 1. No license shall be granted by a municipal council or other municipal authority or provincial authority for the sale of any intoxicating liquors, beer, or wine, at any place or on any premises situated within a distance of two miles of land now used or hereafter to be used by the United States for military purposes at Camp Stotsenberg, in the municipality of Mabalacat, Province of Pampanga; Camp Morrison, municipality of Salomague, Province of Ilocus Sur; Camp Jossman, municipality of Guimaras, Province of Iloilo; Camp Gregg, municipality of Bayambang, Province of Pangasinan; in or near the municipality of Los Baños, Province of La Laguna; in or near the municipality of Iligan, Province of Misamis; in or near the municipality of Batangas, Province of Batangas; in or near the municipality of Legaspi, Province of Albay; in or near the municipality of Sorsogon, Province of Sorsogon; in or near the municipality of Santo Tomas, Province of La Laguna; at Fort William McKinley, near San Pedro Macati, Province of Rizal; or within a distance of one and one-half miles of land used or to be used by the United States for military purposes at Camp Wallace, in the municipality of San Fernando, Province of La Union; at Pasay barracks, municipality of Pasay, Province of Rizal; in or near the municipality of Nueva Caceres, Province of Ambos Camarines; in or near the municipality of Lucena, Province of Tayabas; in or near the municipality of Calamba, Province of La Laguna; or within a distance of one mile of land used by the United States for military purposes at Santa Mesa in the city of Manila: *Provided*, *however*, That the prohibitions herein provided shall not extend to the following-described land within the prohibited areas: Land situated on the left bank of the Pasig river within one mile of Santa Mesa in the city of Manila; land within a circle with a radius of five hundred and eighty yards with a center at the middle of the road in the immediate front of the parish church of the municipality of Batangas, Province of Batangas; land within a circle with a radius of four hundred yards with the center at the southwest corner of the prison in Albay, Province of Albay; land within a circle with a radius of four hundred yards with the center at the southeast corner of the old Tribunal at Daraga, in the Province of Albay; land within a circle of seven hundred yards with the center at the door of the church of San Rafael, in the town of Legaspi, Province of Albay; land within a circle with a radius of three hundred yards with the center at the door of the parish church in Santo Tomas, Province of Batangas; land within a circle with a radius of five hundred yards with the center at the center of the public square in the town of Pasig, Province of Rizal; land within a circle with a radius of seven hundred yards with the center at the center of the public square in the municipality of Nueva Caceres, Province of Ambos Camarines.

SEC. 2. Any person who shall sell, furnish or give away any intoxicating liquors, wine or beer, within the boundaries prohibited in the preceding section shall be punished for each offense by a fine not exceeding one hundred dollars, in money of the United States, or by imprisonment at hard labor not exceeding six months, or by both said punishments, in the discretion of the court.

Sec. 3. Persons to whom licenses have heretofore been granted for the sale of intoxicating liquors within the limits prohibited by this Act, and whose licenses have not yet expired, shall be entitled to be reimbursed, from the treasury into which their license fees have been paid, such a proportion of the fees paid as the time for which the license has yet to run bears to the whole time for which the license was granted; but shall be subject to all the penalties provided by law for selling, furnishing, or giving away intoxicating liquors without a license after this Act shall come into force.

Sec. 4. For the purpose of enforcing this Act, and for no other purpose, the commanding officers of the United States troops stationed at the places named in the first section of the law shall have the powers of a justice of the peace, as defined by existing laws. Prosecutions before such officers, acting as justices of the peace, shall be governed by the provisions of General Orders Numbered Fifty-eight, Office of the Military Governor for the Philippine Islands, dated Manila, Philippine Islands, April twenty-third, nineteen hundred, and the amendments thereof, and all rights of appeals secured by such order and the amendments thereof shall be allowed to defendants prosecuted under this Act. Any order for arrest issued by authority of this Act may be executed by a military officer or soldier designated for that purpose by the officer commanding, as justice of the peace. The imprisonment of defendants convicted under this Act shall be in the civil jail of the province, or the city of Manila, as the case may be. All questions of appeal shall be determined in the manner provided in said General Orders Numbered Fifty-eight. Commanding officers, acting as justices of the peace by virtue of this section, shall not be entitled to fees as justices of the peace for services so rendered; nor shall military officers or soldiers making arrests or serving process be entitled to fees for said services. All fines and costs imposed by virtue of this Act shall be paid into the treasury of the municipality in which the offense was committed, or into the Insular Treasury for the benefit of the city of Manila, as the case may be.

Sec. 5. For the purpose of avoiding future misunderstandings and of facilitating the enforcement of this Act, it shall be the duty of the commanding officer of the United States troops stationed at each of the places named in the first section of this Act to notify the municipal authorities of the municipalities affected hereby of the making of a survey and the running of the line of the precincts within which, by virtue of this Act, the licensing of saloons for the sale of intoxicating liquors is prohibited; and it shall be the duty of such commanding officer and of the municipal officers, after the line shall have been run, to notify all persons then engaged in the sale of intoxicating liquors within the prohibited territory of the operation of this Act and of the time within which they must remove their places of business.

Sec. 6. This Act shall take effect on the first day of May, nineteen hundred and three, except in so far as it applies to the saloons now licensed within the municipality of Bayambang, in the Province of Pangasinan, and the municipality of Los Baños, in the Province of La Laguna, and as to the municipality of Bayambang and the municipality of Los Baños, this Act shall take effect six months from the date of its passage. *Secs. 1 to 6, Act of the Philippine Commission of March 28, 1903 (No. 709).*

2481a. The sale, gift, or other disposal, in the Province of Zambales, to any soldier of the United States Army, Filipino Scouts excepted, or to any sailor or enlisted man of the United States Navy or Marine Corps, of any of the so-called native wines or liquors, such as " vino," " anisado," and " tuba," is hereby prohibited and declared to be unlawful.

Sec. 2. Any person violating the provisions of section one of this Act shall, upon conviction thereof, be punishable for each offense by a fine not to exceed two hundred pesos, or by imprisonment for a term not exceeding six months, or by both such fine and imprisonment, in the discretion of the court. *Secs. 1 and 2, Act of the Philippine Commission of July 7, 1905 (No. 1369).*

(This paragraph, in effect, amends sections 1 and 2 of paragraph 2481.)

2482. Section 1. Section 1 of Act Numbered Seven hundred and nine, entitled "An Act prohibiting the traffic in intoxicating liquors within certain distances of land used by the United States for military purposes and at certain camps therein named," is hereby amended by inserting after the words " for military purposes at Santa Mesa in the city of Manila," and before the words "*Provided, however*," the following words: " or within a distance of three-quarters of a mile of land used by the United States for military purposes near the town of Calbayog, in the Province of Samar."

Sec. 2. Section one of said Act Numbered Seven hundred and nine is hereby further amended by adding at the end thereof the following words: " and land within a circle with a radius of seven hundred yards with the center at the middle of the road immediately in front of the parish church at Lucena, in the Province of Tayabas." *Secs. 1 and 2, Act of the Philippine Commission of May 31, 1904 (No. 1169).*

EMINENT DOMAIN.

2483. Section 1. Section two hundred and forty-one of Act Numbered One hundred and ninety, entitled "An Act providing a code of procedure in civil actions and special proceedings in the Philippine Islands," is hereby amended by adding at the end thereof the following words:

" The words ' public use ' in this section shall include the use of land in these islands for the construction and maintenance of military posts to be occupied by United States forces stationed in the Philippine Islands, and an action in the name of and on behalf of the Philippine Insular Government for the enforcement of the right of eminent domain for the public use thus described may be instituted under this section and the title acquired by the Philippine Government in this land shall be indefeasible and, in furtherance of the use herein described, may be by the Philippine Government, in accordance with a resolution of the Philippine Commission, transferred by a duly executed deed of the Civil Governor to the United States forever."

Sec. 2. An action for the enforcement of the right of eminent domain on behalf of the Government of the United States may be instituted in the name of the Government of the United States upon the direction of the President of the United States or the Secretary of War, or upon the application of the Commanding General of the United States Army, Division of the Philippines. *Secs. 1 and 2, Act of the Philippine Commission of March 5, 1903 (No. 665).*

LOCUST PEST.

2484. Nothing in Act Numbered Eight hundred and seventeen, entitled "An Act declaring that the presence of locusts in various provinces of the islands so threatens the food supply for the coming year as to present a public emergency requiring radical action, and authorizing and providing for the appointment of a board in each province with full powers to call upon all able-bodied inhabitants thereof to take united action to suppress the pest, and for other purposes," shall require the services in the suppression of the locust pest of officers or men of the Army or Navy of the United States, civil employees of the United States Government, officers or employees of the Insular Government, or the officers or servants of companies or individuals engaged in the business of common carriers on sea or land, or priests, ministers of the Gospel, physicians, practicantes, druggists or practicantes de farmacia actually engaged in business, or lawyers when actually engaged in court proceedings. *Sec. 1, Act of the Philippine Commission of August 17, 1903 (No. 834).*

RESIDENCE FOR VOTING.

2485. Section 1. Act No. 82, entitled "The Municipal Code" is hereby amended as follows:

* * * * * * *

(*c*) By adding at the close of section 6 the words "Provided, that officers, soldiers, sailors or marines of the Army or Navy of the United States shall not be considered as having acquired legal residence within the meaning of this section by reason of their having been stationed in the municipalities for the required six months."

* * * * * * *

Sec. 1, Act of the Philippine Commission of November 27, 1901 (No. 303).

QUALIFICATIONS OF ELECTORS—ELECTIONS.

2485a. The electors exercising the privilege of choosing elective officers shall be male persons eighteen or more years of age who have had a legal residence in the township in which they exercise the right of suffrage for a period of six months immediately preceding the election, and who are not citizens or subjects of any foreign power: *Provided*, That officers, soldiers, sailors, or marines of the Army or Navy of the United States shall not be considered as having acquired legal residence within the meaning of this section by reason of their having been stationed in the township for the required six months. *Sec. 6, Act of the Philippine Commission of September 14, 1905 (No. 1397).*

(This paragraph amends paragraph 2485.)

2485b. In no case shall there be elected or appointed to a township office ecclesiastics; soldiers in active service; persons receiving salaries from provincial, departmental, or governmental funds; those who are delinquent in the payment of public taxes assessed after the passage of this Act; or contractors for public works within the province. *Sec. 15, Act of Philippine Commission of September 14, 1905 (No. 1397).*

2485c. The following persons shall be disqualified from voting:

(*a*) Any person who is delinquent in the payment of public taxes.

(*b*) Any person who has been deprived of the right to vote by the sentence of a court of competent jurisdiction since August thirteenth, eighteen hundred and ninety-eight, unless and until acquitted upon appeal to a higher court or restored to all civil rights by amnesty or pardon.

(*c*) Any person who has taken and violated the oath of allegiance to the United States.

(*d*) Any person who, after April ninth, nineteen hundred and two, has been or shall be in arms in the Philippine Islands against the authority or sovereignty of the United States, whether such person be an officer, soldier, or civilian.

(*e*) Any person who, after April ninth, nineteen hundred and two, has made or shall make contribution of money or other valuable thing in aid of any person or organization against the authority or sovereignty of the United States, or who shall demand or receive such contribution from others, or who shall make any contribution to any person or organization hostile to or in arms against the authority or sovereignty of the United States for the purpose of securing any protection, immunity, or benefit, and who has not received the benefit of the Amnesty Proclamation.

(*f*) Any person who, after April ninth, nineteen hundred and two, has given or in any manner whatsoever shall give aid and comfort to any person or organization in the Philippine Islands in opposition to or in arms against the authority or sovereignty of the United States, and who has not received the benefit of the Amnesty Proclamation. *Sec. 8, Act of the Philippine Commission of September 14, 1905 (No. 1397).*

TAXATION.

2486. Section 1. Section two of Act Numbered One hundred and thirty-three, entitled "An Act to amend the Provincial Government Act, Numbered Eighty-three," shall be amended by adding to subsection twenty-six thereunder, after the word " navy " in the eighth line of said subsection, the following: " or a civilian employee in the permanent employment of the War or Navy Department of the United States, who was not a resident of the Islands before his employment in such service, but was brought here for the purpose of such employment," so that the said subsection shall read as follows:

" Sec. 26. There shall be collected in each province, by the provincial treasurer, an annual tax of one peso or one dollar, Mexican, to be called the cedula or registration tax, from every male person of eighteen years of age and not more than fifty-five years of age residing in such province, whether a native of the Philippine Islands, a citizen of the United States, or a foreigner, except a soldier, sailor, or officer of the United States Army or Navy, or a civilian employee in the permanent employment of the War or Navy Department of the United States, who was not a resident of the Islands before his employment in such service, but was brought here for the purpose of such employment, a member of a non-Christian tribe, or a foreign consular officer exempted by treaty or international law." *Sec. 1, Act of the Philippine Commission of June 1, 1903 (No. 785).*

GOVERNMENT OF THE MORO PROVINCE.

2487. Section 1. Section fifteen of Act Numbered Seven hundred and eighty-seven, entitled "An Act providing for the organization and government of the Moro Province," is hereby amended by adding at the end thereof the following:

"*Provided, however*, That the legislative council shall have the power to unite the offices of district secretary and district treasurer, and to provide for the filling of such offices, whether united or separate, by detail of Army officers without civil-service examination, in the interest of economy in the public service. Army officers thus detailed shall receive the same allowance and expenses from the provincial treasury as are allowed to detailed Army officers under section eleven of Act Numbered Seven hundred and eighty-seven." *Sec. 1, Act of the Philippine Commission of September 17, 1903 (No. 889).*

GOVERNMENT OF THE MORO PROVINCE—SALARIES.

2488. Sec. 11. The provincial governor shall receive an annual salary of six thousand dollars and each of the provincial officers shall receive an annual salary of not exceeding four thousand dollars each, in United States currency, to be fixed by the Civil Governor in the appointment and to be approved with the appointment by the Commission. The governors of the districts hereinafter authorized shall receive not exceeding three thousand five hundred dollars annual salary, in United States currency, to be fixed in the case of each district by the legislative council; and the district secretaries and the district treasurers hereinafter authorized shall each receive an annual salary of not exceeding two thousand five hundred dollars, in United States currency, to be fixed for each district by the legislative council. The lieutenant-governor of Dapitan shall receive an annual salary of not exceeding two thousand dollars, in United States currency, to be fixed by the legislative council. In case an officer of the Army is detailed to perform the duties of provincial governor, or provincial engineer, or a governor of a district, he shall receive an allowance equal to twenty per centum of his current proper yearly pay as an officer of the Army and the actual and necessary expenses incurred while absent from his station in the performance of his necessary civil duties.

The salaries of all officers and employees of the province and districts shall be payable out of the revenues of the province. The salaries of the officers and employees of such municipalities as may be organized within the province shall be payable out of the treasury of the respective municipalities. *Sec. 11, Act of the Philippine Commission of June 1, 1903 (No. 787).*

2489. Section eleven of said Act is hereby amended by striking out the words " the lieutenant-governor of Dapitan shall receive an annual salary of not exceeding two thousand dollars, in United States currency, to be fixed by the legislative council " and by making the next sentence of said section, after the words so stricken out, to read as follows: " In case an officer of the Army is detailed to perform the duties of provincial governor or secretary or provincial engineer, or a governor or a secretary of a district, he shall receive an allowance equal to twenty per centum of his current proper yearly pay as an officer of the Army and the actual and necessary expenses incurred while absent from his station in the performance of his necessary civil duties." *Sec. 4, Act of the Philippine Commission of January 13, 1905 (No. 1283).*

(This paragraph amends paragraph 2488.)

2490. Section eleven of Act Numbered Seven hundred and eighty-seven, entitled "An Act providing for the organization and government of the Moro Province," as amended by section four of Act Numbered Twelve hundred and eighty-three, is hereby further amended by making the last sentence of the first paragraph of said section read as follows:

"In case officers of the Army are detailed to perform the duties of provincial or district officials of the Moro Province they may be paid an allowance, in the discretion of the legislative council, as follows: Officers above the grade of colonel, not exceeding twenty per centum, and officers of the grade of colonel and below said grade not exceeding fifty per centum, of their current proper yearly pay as officers of the Army, and they shall also receive the actual and necessary expenses incurred while absent from their stations in the performance of their necessary civil duties." *Sec. 1, Act of the Philippine Commission of September 8, 1905 (No. 1391).*

(This paragraph amends paragraphs 2488 and 2489.)

ESTABLISHMENT OF PROVINCIAL GOVERNMENTS.

2491. A civil provincial government is hereby established for each province of the Philippine Islands not organized under the Provincial Government Act Numbered Eighty-three, except the Moro Province. Every provincial government established under this Act shall be a body corporate, with power to sue and be sued, to have and use a corporate seal, to hold property, real and personal, to make contracts for labor and material needed in the construction of duly authorized public works, and to incur such other obligations as are expressly authorized by law.

Sec. 2. Except as hereinafter provided, the officers of each provincial government organized under this Act shall be a provincial governor, a provincial secretary, a provincial treasurer, a provincial supervisor, and a provincial fiscal. No person shall be eligible for any of these offices who is not either a citizen of the United States, a native of the Philippine Islands, a person who has taken the oath of allegiance to the United States and served as a member of the Army or Navy of the United States and been honorably discharged therefrom, or who, not being a subject or citizen of any other power or government, may have under or by virtue of the treaty of Paris acquired the political rights of a native of the Philippine Islands, or who, having taken the oath of allegiance to the United States, shall violate the same. Nonresidence in the province shall not render the person appointed to the office ineligible.

SEC. 3. The provincial officers shall be appointed by the Governor-General, with the advice and consent of the Philippine Commission, and shall hold office during his pleasure. They shall reside and have their offices at the capital of the province. *Secs. 1 to 3, Act of the Philippine Commission of September 14, 1905 (No. 1396).*

ANNUAL TAX FOR ROADS, ETC.

2492. (*a*) There is hereby imposed, for the purpose of protecting, improving, and extending the roads and trails of the province and of constructing public works, an annual tax of two pesos on every male inhabitant of the province over eighteen years and under sixty years of age, except soldiers and sailors of the United States Army and Navy, civilian employees of the military branch of the United States Government in the Philippine Islands, consular and diplomatic representatives and of officials of foreign powers in the Philippine Islands, paupers, insane persons, and persons serving a sentence of more than one year in a public prison. This tax shall be collected by the provincial treasurer and his deputies. It shall be deemed to be delinquent after the first day of February of each year: *Provided*, That the amount of taxes due and payable for the period from the date of this Act to the first day of January, nineteen hundred and seven, shall be two pesos: *And provided further*, That this amount shall be due and payable on the first day of December, nineteen hundred and five, and shall become delinquent on the first day of January, nineteen hundred and six: *And provided further*, That persons liable to pay this tax not residents of the province prior to February first of any year, but who enter and reside in the province after that date, may pay the tax within thirty days after their arrival in the province. *Sec. 19, Act of the Philippine Commission of September 14, 1905 (No. 1396).*

OATH OF OFFICE.

2493. Before assuming office each provincial officer shall take and subscribe to the following oath or affirmation:

"I, --, having been appointed to the office of ------------------------ of the Province of --------------------------------, do hereby solemnly swear (or affirm) that I will well and truly perform all the duties of said office; that I will faithfully account for all moneys coming into my hands as such officer; that I will bear true faith and allegiance to the

Government of the United States; that I take this oath without any mental reservation whatsoever. So help me God. (In case of affirmation the last four words shall be omitted.)"

The oaths of office may be administered to provincial officers by a member of the Commission, the Executive Secretary, the Assistant Executive Secretary, the governor of the province, or any United States Army officer stationed in the province, by the judge of First Instance within whose judicial district the said province lies, by any notary public or justice of the peace, or by any other person duly authorized in such case to administer oaths. *Sec. 5, Act of the Philippine Commission of September 14, 1905 (No. 1396).*

TOLL ROADS AND BRIDGES.

2494. Whenever the provincial board of any province shall decide it to be necessary for the proper maintenance of any road or highway within the province, it may designate any such road or highway, or any part of any road or highway, or any bridge, which is maintained, or intended to be built and maintained wholly by provincial funds, as a toll road or toll bridge, and may fix, and from time to time may change, the rates of toll to be paid for the use thereof, which shall be reasonable and shall not be greater than is necessary to produce the revenue requisite for the proper building, maintenance, or improvement thereof during the period while the toll rates are in force. The rates fixed shall be subject to the approval of the Governor-General: *Provided*, That no toll shall be collected from persons passing over such road or bridge on foot: *And provided further*, That officers and enlisted men and civil employees of the United States Army, Navy, and Marine Corps shall be exempt from the payment of tolls or charges under this Act. *Sec. 1, Act of the Philippine Commission of March 20, 1907 (No. 1617).*

LEAVE PRIVILEGES.

2495. The provisions of Act Numbered One thousand and forty, in regard to all leave privileges, shall hereafter apply to Army officers serving with the Philippines Constabulary: *Provided, however*, That the provisions of said Act in regard to half pay while going to and returning from the United States shall apply only to that portion of the compensation of said officers paid from Insular funds. *Sec. 1, Act of the Philippine Commission of March 13, 1907 (No. 1607).*

ACTS OF CONGRESS.

ARTICLES FREE OF DUTY.

2496. Used household furniture of persons coming to settle in the Philippine Islands, including such articles, effects, and furnishings as pictures, books, pianos, organs, chinaware, and kitchen utensils, in quantities and of the class suitable to the rank and position of the persons bringing the same and intended for their own use and benefit and not for barter or sale: *Provided*, That they have all been used by said persons for more than one year; that they are brought within a reasonable time after the arrival of the owners, in the discretion of the collector of customs: *And provided further*, That satisfactory evidence be produced that such persons are actually coming to settle in the Philippine Islands; that the change of residence is bona fide, and that the privilege of free entry under this paragraph has never been previously granted to them: *And provided further*, That if such persons are coming to the Philippine Islands from the United States and are citizens thereof, the period of one year specified in the first proviso of this paragraph shall not be effective. Officers of the United States Army, Navy, and Marine Corps and religious missionaries taking stations in the islands shall be given the same privileges granted to other persons in this article: *And provided further*, That all articles of professional equipment, wearing apparel, and household goods belonging to officers of the United States Army, Navy, and Marine Corps, officers of the Philippine government, and religious missionaries who are citizens of the United States, imported from the United States for their personal use and benefit and not for barter or sale, may be entered free of duty on the personal certificate of such person that they fulfill the above conditions: *Provided*, *however*, That United States Government vessels, whether transports of the Army or naval vessels, when coming from the United States or a foreign port to the ports of the Philippine Islands, shall be subject to the same inspection by customs officers of the Philippine government, for the purpose of determining whether they have on board articles or merchandise dutiable under the laws of the Philippine Islands, as such United States Government vessels are subject to by customs officers of the United States Government when such vessels enter ports of the United States from foreign countries for the purpose of determining whether such vessels have on board articles or merchandise dutiable under the laws of the United States. *Sec. 12*, *Act of March 3*, *1905* (*33 Stats.*, *974*).

TONNAGE DUES.

2497. The following shall be exempt from tonnage dues:

A vessel belonging to or employed in the service of the Government of the United States. * * * *Sec. 15*, *Act of March 3*, *1905* (*33 Stats.*, *976*).

CHAPTER L.

DISTRICT OF ALASKA.

2498. All moneys derived from and collected for liquor licenses, occupation or trade licenses outside of the incorporated towns in the district of Alaska shall be deposited in the Treasury Department of the United States, there to remain as a separate and distinct fund, to be known as the 'Alaska fund,' and to be wholly devoted to the purposes hereinafter stated in the district of Alaska. One-fourth of said fund, or so much thereof as may be necessary, shall be devoted to the establishment and maintenance of public schools in said district; five per centum of said fund shall be devoted to the care and maintenance of insane persons in said district, or so much of said five per centum as may be needed; and all the residue of said fund shall be devoted to the construction and maintenance of wagon roads, bridges, and trails in said district: *And provided further*, That the clerk of the court of each judicial division of said district is authorized, and he is hereby directed, whenever considered necessary, to call upon the United States marshal of said judicial division to aid in the collection of said license moneys by designating regular or special deputies of his office to act as temporary license inspectors, and it shall be the duty of said United States marshal to render such aid; and the said regular or special deputies, while actually engaged in the performance of this duty, shall receive the same fees and allowances and be paid in the same manner as when performing their regular duties. *Sec. 1, Act of May 14, 1906* (*34 Stats., 192*).

(This paragraph amends and takes the place of section 1 of the act of January 27, 1905.)

2499. There shall be a board of road commissioners in said district, to be composed of an engineer officer of the United States Army to be detailed and appointed by the Secretary of War, and two other officers of that part of the Army stationed in said district and to be designated by the Secretary of War. The said engineer officer shall, during the term of his said detail and appointment, abide in said district. The said board shall have the power, and it shall be their duty, upon their own motion or upon petition, to locate, lay out, construct, and maintain wagon roads and pack trails from any point on the navigable waters of said district to any town, mining or other industrial camp or settlement, or between any such town, camps, or settlements therein, if in their judgment such roads or trails are needed and will be of permanent value for the development of the district; but no such road or trail shall be constructed to any town, camp, or settlement which is wholly transitory or of no substantial value or importance for mining, trade, agricultural, or manufacturing purposes. The said board shall prepare maps, plans, and specifications of every road or trail they may locate and lay out, and whenever more than twenty thousand dollars, in the aggregate, shall have to be expended upon the actual construction of any road or section of road designed to be permanent, contract for the work shall be let by them to the lowest responsible bidder, upon sealed bids, after due notice, under rules and regulations to be prescribed by the Secretary of War. The board may reject any bid if they deem the same unreasonably high or if they find that there is a combination among bidders. In case no responsible and reasonable bid can be secured, then the work may be carried on with material and men procured and hired by the board. The engineer officer of the board shall in all cases supervise the work of construction and see that the same is properly performed. As soon as any road or trail laid out by the board has been constructed and completed they shall examine the same and make a full and detailed report of the work done on the same to the Secretary of War, and in such report they shall state whether the road or trail has been completed conformably to the maps, plans, and specifications of the same. It shall be the duty of said board, as far as practicable, to keep in proper repair all roads and trails constructed under their supervision, and the same rules as to the manner in which the work of repair shall be done, whether by contract or otherwise, shall govern as in the case of the original construction of the road or trail. The cost and expenses of laying out, constructing, and repairing such roads and trails shall be paid by the Secretary of the Treasury, through the authorized disbursing officer of the board designated by the Secretary of War, out of the road and trail portion of said 'Alaska fund' upon vouchers approved and certified by said board. The Secretary of the Treasury shall, at the end of each month, send by mail to each of the members of said board a statement of the amount available of said 'Alaska fund' for the construction and repair of roads and trails, and no greater liability for construction or repair shall at any time be incurred by said board than the money available therefor at that time in said fund. The members of said board shall, in addition to their salaries, be reimbursed in the sums actually paid or incurred by them in traveling expenses in the performance of their duties, and shall be entitled to receive their actual expenses of living while serving as members of said board within the limits of the district and not stationed at a military post. *Sec. 2, Act of May 14, 1906 (34 Stats., 192).*

(This paragraph amends and takes the place of section 2 of the act of January 27, 1905, 33 Stats., 616.)

APPENDIX A.

CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND CERTAIN POWERS FOR THE ADAPTATION TO MARITIME WARFARE OF THE PRINCIPLES OF THE GENEVA CONVENTION OF AUGUST 22, 1864.

Signed at The Hague July 29, 1899.
Ratification advised by the Senate May 4, 1900.
Ratified by the President of the United States August 3, 1900.
Ratification deposited with the Netherlands Government September 4, 1900.
Proclaimed November 1, 1901.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas a Convention for the adaptation to Maritime Warfare of the principles of the Geneva Convention of August 22, 1864, was concluded and signed on July 29, 1899, by the Plenipotentiaries of the United States of America, Germany, Austria-Hungary, Belgium, China, Denmark, Spain, Mexico, France, Great Britain and Ireland, Greece, Italy, Japan, Luxembourg, Montenegro, the Netherlands, Persia, Portugal, Roumania, Russia, Servia, Siam, Sweden and Norway, Switzerland, Turkey, and Bulgaria, the original of which Convention, in the French language, is word for word as follows:

His Majesty the Emperor of Germany, King of Prussia; His Majesty the Emperor of Austria, King of Bohemia etc. and Apostolic King of Hungary; His Majesty the King of the Belgians; His Majesty the Emperor of China; His Majesty the King of Denmark; His Majesty the King of Spain and in His Name Her Majesty the Queen Regent of the Kingdom; the President of the United States of America; the President of the United Mexican States; the President of the French Republic; Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India; His Majesty the King of the Hellenes; His Majesty the King of Italy; His Majesty the Emperor of Japan; His Royal Highness the Grand Duke of Luxemburg, Duke of Nassau; His Highness the Prince of Montenegro; Her Majesty the Queen of the Netherlands; His Imperial Majesty the

Shah of Persia; His Majesty the King of Portugal and of the Algarves etc.; His Majesty the King of Roumania; His Majesty the Emperor of all the Russias; His Majesty the King of Servia; His Majesty the King of Siam; His Majesty the King of Sweden and Norway; the Swiss Federal Council; His Majesty the Emperor of the Ottomans and His Royal Highness the Prince of Bulgaria.

Alike animated by the desire to diminish, as far as depends on them the evils inseparable from warfare, and wishing with this object to adapt to maritime warfare the principles of the Geneva Convention of the 22nd August, 1864, have decided to conclude a convention to this effect:

* * * * * * *

ARTICLE I.

Military hospital ships, that is to say, ships constructed or assigned by States specially and solely for the purpose of assisting the wounded, sick or shipwrecked, and the names of which shall have been communicated to the belligerent Powers at the beginning or during the course of hostilities, and in any case before they are employed, shall be respected and cannot be captured while hostilities last.

These ships, moreover, are not on the same footing as men-of-war as regards their stay in a neutral port.

ARTICLE II.

Hospital ships, equipped wholly or in part at the cost of private individuals or officially recognized relief Societies, shall likewise be respected and exempt from capture, provided the belligerent Power to whom they belong has given them an official commission and has notified their names to the hostile Power at the commencement of or during hostilities, and in any case before they are employed.

These ships should be furnished with a certificate from the competent authorities, declaring that they had been under their control while fitting out and on final departure.

ARTICLE III.

Hospital-ships, equipped wholly or in part at the cost of private individuals or officially recognized Societies of neutral countries, shall be respected and exempt from capture, if the neutral Power to whom they belong has given them an official commission and notified their names to the belligerent powers at the commencement of or during hostilities, and in any case before they are employed.

ARTICLE IV.

The ships mentioned in Articles I, II, and III shall afford relief and assistance to the wounded, sick, and shipwrecked of the belligerents independently of their nationality.

The Governments engage not to use these ships for any military purpose.

These ships must not in any way hamper the movements of the combatants.

During and after an engagement they will act at their own risk and peril.

The belligerents will have the right to control and visit them; they can refuse to help them, order them off, make them take a certain course, and put a Commissioner on board; they can even detain them, if important circumstances require it.

As far as possible the belligerents shall inscribe in the sailing papers of the hospital-ships the orders they give them.

ARTICLE V.

The military hospital-ships shall be distinguished by being painted white outside with a horizontal band of green about a metre and a half in breadth.

The ships mentioned in Articles II and III shall be distinguished by being painted white outside with a horizontal band of red about a metre and a half in breadth.

The boats of the ships above mentioned, as also small craft which may be used for hospital work, shall be distinguished by similar painting.

All hospital ships shall make themselves known by hoisting, together with their national flag, the white flag with a red cross provided by the Geneva Convention.

ARTICLE VI.

Neutral merchantmen, yachts, or vessels, having, or taking on board, sick, wounded, or shipwrecked of the belligerents, cannot be captured for so doing, but they are liable to capture for any violation of neutrality they may have committed.

ARTICLE VII.

The religious, medical, or hospital staff of any captured ship is inviolable, and its members cannot be made prisoners of war. On leaving the ship they take with them the objects and surgical instruments which are their own private property.

This staff shall continue to discharge its duties while necessary, and can afterwards leave when the Commander-in-Chief considers it possible.

The belligerents must guarantee to the staff that has fallen into their hands the enjoyment of their salaries intact.

Article VIII.

Sailors and soldiers who are taken on board when sick or wounded, to whatever nation they belong, shall be protected and looked after by the captors.

Article IX.

The shipwrecked, wounded, or sick of one of the belligerents who fall into the hands of the other, are prisoners of war. The captor must decide, according to circumstances, if it is best to keep them or send them to a port of his own country, to a neutral port, or even to a hostile port. In the last case, prisoners thus repatriated cannot serve as long as the war lasts.

Article X.

(Excluded)

Article XI.

The rules contained in the above Articles are binding only on the Contracting Powers, in case of War between two or more of them.

The said rules shall cease to be binding from the time when, in a war between the Contracting Powers, one of the belligerents is joined by a non-Contracting Power.

Article XII.

The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

On the receipt of each ratification a *procès-verbal* shall be drawn up, a copy of which, duly certified, shall be sent through the diplomatic channel to all the Contracting Powers.

Article XIII.

The non-Signatory Powers who accepted the Geneva Convention of the 22nd August, 1864, are allowed to adhere to the present Convention.

For this purpose they must make their adhesion known to the Contracting Powers by means of a written notification addressed to the

Netherlands Government, and by it communicated to all the other Contracting Powers.

ARTICLE XIV.

In the event of one of the High Contracting Parties denouncing the present Convention, such denunciation shall not take effect until a year after the notification made in writing to the Netherlands Government, and forthwith communicated by it to all the other Contracting Powers.

This denunciation shall only affect the notifying Power.

In testimony whereof the respective Plenipotentiaries have signed the present Convention and affixed their seals thereto.

Done at The Hague the 29th July, 1899, in single copy, which shall be kept in the archives of the Government of the Netherlands, and copies of which duly certified, shall be sent through the diplomatic channel to the Contracting Powers.

* * * * * * *

And whereas on an understanding reached by the Government of the Netherlands with the signatory powers it was agreed to exclude from the ratifications of said Convention its Article X;

And whereas the said Convention, with its Article X excluded, was ratified by the Government of the United States, by and with the advice and consent of the Senate thereof, and by the Governments of the other Powers aforesaid, with the exception of those of China and Turkey;

And whereas, in pursuance of the stipulations of Article XII of the said Convention the ratifications of the said Convention were deposited at the Hague on the 4th. day of September, 1900, by the Plenipotentiaries of the Governments of the United States of America, Germany, Austria-Hungary, Belgium, Denmark, Spain, France, Great Britain, Italy, the Netherlands, Persia, Portugal, Roumania, Russia, Siam, Sweden and Norway and Bulgaria; on the 6th. day of October, 1900, by the Plenipotentiary of the Government of Japan; on the 16th. day of October, 1900, by the Plenipotentiary of the Government of Monténégro; on the 29th. day of December, 1900, by the Plenipotentiary of the Government of Switzerland; on the 4th. day of April, 1901, by the Plenipotentiary of the Government of Greece; on the 17th. day of April, 1901, by the Plenipotentiary of the Government of Mexico; on the 11th. day of May, 1901, by the Plenipotentiary of the Government of Servia, and on the 12th. day of July, 1901, by the Plenipotentiary of the Government of Luxembourg:

Now, therefore, be it known that I, Theodore Roosevelt, President of the United States of America, have caused the said Convention, with its Article X excluded, to be made public, to the end that the same and every clause thereof, may be observed and fulfilled with good faith by the United States and the citizens thereof,

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington, this first day of November in the year of our Lord one thousand nine hundred and one, and [L. S.] of the Independence of the United States, the one hundred and twenty-sixth.

THEODORE ROOSEVELT

By the President:
JOHN HAY
Secretary of State.

APPENDIX B.

CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND CERTAIN POWERS, WITH RESPECT TO THE LAWS AND CUSTOMS OF WAR ON LAND.

Signed at The Hague July 29, 1899.
Ratification advised by the Senate March 14, 1902.
Ratified by the President of the United States March 19, 1902.
Ratifications deposited with the Netherlands Government September 4, 1900.
Proclaimed April 11, 1902.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas a Convention with respect to the laws and customs of war on land was concluded and signed on July 29, 1899, by the Plenipotentiaries of the United States of America, Germany, Austria-Hungary, Belgium, Denmark, Spain, Mexico, France, Great Britain and Ireland, Greece, Italy, Japan, Luxembourg, Montenegro, the Netherlands, Persia, Portugal, Roumania, Russia, Servia, Siam, Sweden and Norway, Turkey, and Bulgaria, the original of which Convention, in the French language, is word for word as follows:

CONVENTION WITH RESPECT TO THE LAWS AND CUSTOMS OF WAR ON LAND.

His Majesty the Emperor of Germany, King of Prussia; His Majesty the Emperor of Austria, King of Bohemia etc., and Apostolic King of Hungary; His Majesty the King of the Belgians; His Majesty the King of Denmark; His Majesty the King of Spain and in His Name Her Majesty the Queen Regent of the Kingdom; the President of the United States of America; the President of the United Mexican States; the President of the French Republic; Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India; His Majesty the King of the Hellenes; His Majesty the King of Italy; His Majesty the Emperor of Japan; His Royal Highness the Grand Duke of Luxemburg, Duke of Nassau; His Highness the Prince of Montenegro; Her Majesty the Queen of the Netherlands; His Imperial Majesty the Shah of Persia; His Majesty the King of Portugal and of the Algarves etc.; His Majesty the King of Roumania; His Majesty the Emperor of all the Russias; His Majesty the King of Servia; His Majesty the King of Siam; His Majesty the King of Sweden and Norway; His Majesty the Emperor of the Ottomans and His Royal Highness the Prince of Bulgaria.

Considering that, while seeking means to preserve peace and prevent armed conflicts among nations, it is likewise necessary to have regard to cases where an appeal to arms may be caused by events which their solicitude could not avert;

Animated by the desire to serve, even in this extreme hypothesis, the interests of humanity and the ever increasing requirements of civilization;

Thinking it important, with this object, to revise the laws and general customs of war, either with the view of defining them more precisely, or of laying down certain limits for the purpose of modifying their severity as far as possible;

Inspired by these views which are enjoined at the present day, as they were twenty-five years ago at the time of the Brussels Conference in 1874, by a wise and generous foresight;

Have, in this spirit, adopted a great number of provisions, the object of which is to define and govern the usages of war on land.

In view of the High Contracting Parties, these provisions, the wording of which has been inspired by the desire to diminish the evils of war so far as military necessities permit, are destined to serve as general rules of conduct for belligerents in their relations with each other and with populations.

It has not, however, been possible to agree forthwith on provisions embracing all the circumstances which occur in practice.

On the other hand, it could not be intended by the High Contracting Parties that the cases not provided for should, for want of a written provision, be left to the arbitrary judgment of the military Commanders.

Until a more complete code of the laws of war is issued, the High Contracting Parties think it right to declare that in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity, and the requirements of the public conscience;

They declare that it is in this sense especially that Articles I and II of the Regulations adopted must be understood;

The High Contracting Parties, desiring to conclude a Convention to this effect, have appointed as their Plenipotentiaries, to-wit:—

* * * * * * *

Who, after communication of their full powers, found in good and due form, have agreed on the following:—

ARTICLE I.

The High Contracting Parties shall issue instructions to their armed land forces, which shall be in conformity with the "Regulations respecting the Laws and Customs of War on Land" annexed to the present Convention.

ARTICLE II.

The provisions contained in the Regulations mentioned in Article I are only binding on the Contracting Powers, in case of war between two or more of them.

These provisions shall cease to be binding from the time when, in a war between Contracting Powers, a non-Contracting Power joins one of the belligerents.

ARTICLE III.

The present Convention shall be ratified as speedily as possible.

The ratifications shall be deposited at the Hague.

A *procès-verbal* shall be drawn up recording the receipt of each ratification, and a copy, duly certified, shall be sent through the diplomatic channel, to all the Contracting Powers.

ARTICLE IV.

Non-Signatory Powers are allowed to adhere to the Present Convention.

For this purpose they must make their adhesion known to the Contracting Powers by means of a written notification, addressed to the Netherland Government, and by it communicated to all the other Contracting Powers.

ARTICLE V.

In the event of one of the High Contracting Parties denouncing the present Convention, such denunciation would not take effect until a year after the written notification made to the Netherland Government, and by it at once communicated to all the other Contracting Powers.

This denunciation shall affect only the notifying Power.

In faith of which the Plenipotentiaries have signed the present Convention and affixed their seals thereto.

Done at the Hague the 29th July 1899, in a single copy, which shall be kept in the archives of the Netherland Government, and copies of which, duly certified, shall be delivered to the Contracting Powers through the diplomatic channel.

ANNEX TO THE CONVENTION.

REGULATIONS RESPECTING THE LAWS AND CUSTOMS OF WAR ON LAND.

SECTION I.—ON BELLIGERENTS.

CHAPTER I.—*On the Qualifications of Belligerents.*

ARTICLE I.

The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps, fulfilling the following conditions:

1. To be commanded by a person responsible for his subordinates;
2. To have a fixed distinctive emblem recognizable at a distance;
3. To carry arms openly; and
4. To conduct their operations in accordance with the laws and customs of war.

In countries where militia or volunteer corps constitute the army, or form part of it, they are included under the denomination "army."

ARTICLE II.

The population of a territory which has not been occupied who, on the enemy's approach, spontaneously take up arms to resist the invading troops without having time to organize themselves in accordance with Article I, shall be regarded a belligerent, if they respect the laws and customs of war.

ARTICLE III.

The armed forces of the belligerent parties may consist of combatants and non-combatants. In case of capture by the enemy both have a right to be treated as prisoners of war.

CHAPTER II.—*On Prisoners of War.*

ARTICLE IV.

Prisoners of war are in the power of the hostile Government, but not in that of the individuals or corps who captured them.

They must be humanely treated.

All their personal belongings, except arms, horses, and military papers remain their property.

ARTICLE V.

Prisoners of war may be interned in a town, fortress, camp, or any other locality, and bound not to go beyond certain fixed limits; but they can only be confined as an indispensable measure of safety.

ARTICLE VI.

The State may utilize the labor of prisoners of war according to their rank and aptitude. Their tasks shall not be excessive, and shall have nothing to do with the military operations.

Prisoners may be authorized to work for the Public Service, for private persons, or on their own account.

Work done for the State shall be paid for according to the tariffs in force for soldiers of the national army employed on similar tasks.

When the work is for other branches of the Public Service or for private persons, the conditions shall be settled in agreement with the military authorities.

The wages of the prisoners shall go towards improving their position, and the balance shall be paid them at the time of their release, after deducting the cost of their maintenance.

ARTICLE VII.

The Government into whose hands prisoners of war have fallen is bound to maintain them.

Failing a special agreement between the belligerents, prisoners of war shall be treated as regards food, quarters, and clothing, on the same footing as the troops of the Government which has captured them.

ARTICLE VIII.

Prisoners of war shall be subject to the laws, regulations, and orders in force in the army of the State into whose hands they have fallen.

Any act of insubordination warrants the adoption, as regards them, of such measures of severity as may be necessary.

Escaped prisoners, recaptured before they have succeeded in rejoining their army, or before quitting the territory occupied by the army that captured them, are liable to disciplinary punishment.

Prisoners who, after succeeding in escaping are again taken prisoners, are not liable to any punishment for the previous flight.

ARTICLE IX.

Every prisoner of war, if questioned, is bound to declare his true name and rank, and if he disregards this rule, he is liable to a curtailment of the advantages accorded to the prisoners of war of his class.

ARTICLE X.

Prisoners of war may be set at liberty on parole if the laws of their country authorized it, and, in such a case, they are bound, on their personal honour, scrupulously to fulfill, both as regards their own Government and the Government by whom they were made prisoners, the engagements they have contracted.

In such cases, their own Government shall not require of nor accept from them any service incompatible with the parole given.

ARTICLE XI.

A prisoner of war can not be forced to accept his liberty on parole; similarly the hostile Government is not obliged to assent to the prisoner's request to be set at liberty on parole.

ARTICLE XII.

Any prisoner of war, who is liberated on parole and recaptured, bearing arms against the Government to whom he had pledged his honor, or against the allies of that Government, forfeits his right to be treated as a prisoner of war, and can be brought before the Courts.

ARTICLE XIII.

Individuals who follow an army without directly belonging to it, such as newspaper correspondents and reporters, sutlers, contractors, who fall into the enemy's hands, and whom the latter think fit to detain, have a right to be treated as prisoners of war, provided they can produce a certificate from the military authorities of the army they were accompanying.

ARTICLE XIV.

A Bureau for information relative to prisoners of war is instituted, on the commencement of hostilities, in each of the belligerent States, and, when necessary, in the neutral countries on whose territory belligerents have been received. This Bureau is intended to answer all inquiries about prisoners of war, and is furnished by the various services concerned with all the necessary information to enable it to keep an individual return for each prisoner of war. It is kept informed of internments and changes, as well as of admissions into hospital and deaths.

It is also the duty of the Information Bureau to receive and collect all objects of personal use, valuables, letters, &c., found on the battlefields or left by prisoners who have died in hospital or ambulance, and to transmit them to those interested.

ARTICLE XV.

Relief Societies for prisoners of war, which are regularly constituted in accordance with the law of the country with the object of serving as the intermediary for charity, shall receive from the belligerents for themselves and their duly accredited agents every facility, within the bounds of military requirements and Administrative Regulations, for the effective accomplishment of their humane task. Delegates of these Societies may be admitted to the places of internment for the distribution of relief, as also to the halting places of repatriated prisoners, if furnished with a personal permit by the military authorities, and on giving an engagement in writing to comply with all their Regulations for order and police.

ARTICLE XVI.

The Information Bureau shall have the privilege of free postage. Letters, money orders, and valuables, as well as postal parcels destined for the prisoners of war or dispatched by them, shall be free of all postal duties both in the countries of origin and destination, as well as in those they pass through.

Gifts and relief in kind for prisoners of war shall be admitted free of all duties of entry and others, as well as of payments for carriage by the Government railways.

ARTICLE XVII.

Officers taken prisoners may receive, if necessary, the full pay allowed them in this position by their country's regulations, the amount to be repaid by their Government.

ARTICLE XVIII.

Prisoners of war shall enjoy every latitude in the exercise of their religion, including attendance at their own church services, provided only they comply with the regulations for order and police issued by the military authorities.

ARTICLE XIX.

The wills of prisoners of war are received or drawn up on the same conditions as for soldiers of the National Army.

The same rules shall be observed regarding death certificates, as well as for the burial of prisoners of war, due regard being paid to their grade and rank.

ARTICLE XX.

After the conclusion of peace, the repatriation of prisoners of war shall take place as speedily as possible.

CHAPTER III.—*On the Sick and Wounded.*

ARTICLE XXI.

The obligations of belligerents with regard to the sick and wounded are governed by the Geneva Convention of the 22nd August, 1864, subject to any modifications which may be introduced into it.

SECTION II.—ON HOSTILITIES.

CHAPTER I.—*On means of injuring the Enemy, Sieges, and Bombardments.*

ARTICLE XXII.

The right of belligerents to adopt means of injuring the enemy is not unlimited.

ARTICLE XXIII.

Besides the prohibitions provided by special Conventions, it is especially prohibited:—

(a.) To employ poison or poisoned arms;

(b.) To kill or wound treacherously individuals belonging to the hostile nation or army;

(c.) To kill or wound an enemy who, having laid down arms, or having no longer means of defence, has surrendered at discretion;

(d.) To declare that no quarter will be given;

(e.) To employ arms, projectiles, or material of a nature to cause superfluous injury;

(f.) To make improper use of a flag of truce, the national flag, or military ensigns and the enemy's uniform, as well as the distinctive badges of the Geneva Convention;

(g.) To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war.

ARTICLE XXIV.

Ruses of war and the employment of methods necessary to obtain information about the enemy and the country, are considered allowable.

ARTICLE XXV.

The attack or bombardment of towns, villages, habitations or buildings which are not defended, is prohibited.

ARTICLE XXVI.

The Commander of an attacking force, before commencing a bombardment, except in the case of an assault, should do all he can to warn the authorities.

ARTICLE XXVII.

In sieges and bombardments all necessary steps should be taken to spare as far as possible edifices devoted to religion, art, science, and charity, hospitals, and places where the sick and wounded are collected, provided they are not used at the same time for military purposes.

The besieged should indicate these buildings or places by some particular and visible signs, which should previously be notified to the assailants.

ARTICLE XXVIII.

The pillage of a town or place, even when taken by assault, is prohibited.

CHAPTER II.—*On Spies.*

ARTICLE XXIX.

An individual can only be considered a spy if, acting clandestinely, or on false pretences, he obtains, or seeks to obtain information in the zone of operations of a belligerent, with the intention of communicating it to the hostile party.

Thus, soldiers not in disguise who have penetrated into the zone of operations of a hostile army to obtain information are not considered spies. Similarly, the following are not considered spies: soldiers or civilians, carrying out their mission openly, charged with the delivery of despatches destined either for their own army or for that of the enemy. To this class belong likewise individuals sent in balloons to deliver despatches, and generally to maintain communication between the various parts of an army or a territory.

ARTICLE XXX.

A spy taken in the act cannot be punished without previous trial.

ARTICLE XXXI.

A spy who, after rejoining the army to which he belongs, is subsequently captured by the enemy, is treated as a prisoner of war, and incurs no responsibility for his previous acts of espionage.

CHAPTER III.—*On Flags of Truce.*

ARTICLE XXXII.

An individual is considered as bearing a flag of truce who is authorized by one of the belligerents to enter into communication with the other, and who carries a white flag. He has a right to inviolability, as well as the trumpeter, bugler, or drummer, the flag-bearer, and the interpreter who may accompany him.

ARTICLE XXXIII.

The Chief to whom a flag of truce is sent is not obliged to receive it in all circumstances.

He can take all steps necessary to prevent the envoy taking advantage of his mission to obtain information.

In case of abuse, he has the right to detain the envoy temporarily.

ARTICLE XXXIV.

The envoy loses his rights of inviolability if it is proved beyond doubt that he has taken advantage of his privileged position to provoke or commit an act of treachery.

CHAPTER IV.—*On Capitulations.*

ARTICLE XXXV.

Capitulations agreed on between the Contracting Parties must be in accordance with the rules of military honour.

When once settled, they must be scrupulously observed by both the parties.

CHAPTER V.—*On Armistices.*

ARTICLE XXXVI.

An armistice suspends military operations by mutual agreement between the belligerent parties. If its duration is not fixed, the belligerent parties can resume operations at any time, provided always the enemy is warned within the time agreed upon, in accordance with the terms of the armistice.

ARTICLE XXXVII.

An armistice may be general or local. The first suspends all military operations of the belligerent States; the second, only those between certain fractions of the belligerent armies and in a fixed radius.

ARTICLE XXXVIII.

An armistice must be notified officially, and in good time, to the competent authorities and the troops. Hostilities are suspended immediately after the notification, or at a fixed date.

ARTICLE XXXIX.

It is for the Contracting Parties to settle, in the terms of the armistice, what communications may be held, on the theatre of war, with the population and with each other.

ARTICLE XL.

Any serious violation of the armistice by one of the parties gives the other party the right to denounce it, and even, in case of urgency, to recommence hostilities at once.

ARTICLE XLI.

A violation of the terms of the armistice by private individuals acting on their own initiative, only confers the right of demanding the punishment of the offenders, and, if necessary, indemnity for the losses sustained.

SECTION III.—ON MILITARY AUTHORITY OVER HOSTILE TERRITORY.

ARTICLE XLII.

Territory is considered occupied when it is actually placed under the authority of the hostile army.

The occupation applies only to the territory where such authority is established, and in a position to assert itself.

ARTICLE XLIII.

The authority of the legitimate power having actually passed into the hands of the occupant, the latter shall take all steps in his power to re-establish and insure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

ARTICLE XLIV.

Any compulsion of the population of occupied territory to take part in military operations against its own country is prohibited.

Article XLV.

Any pressure on the population of occupied territory to take the oath to the hostile Power is prohibited.

Article XLVI.

Family honour and rights, individual lives and private property, as well as religious convictions and liberty, must be respected.

Private property cannot be confiscated.

Article XLVII.

Pillage is formally prohibited.

Article XLVIII.

If, in the territory occupied, the occupant collects the taxes, dues, and tolls imposed for the benefit of the State, he shall do it, as far as possible, in accordance with the rules in existence and the assessment in force, and will in consequence be bound to defray the expenses of the administration of the occupied territory on the same scale as that by which the legitimate Government was bound.

Article XLIX.

If, besides the taxes mentioned in the preceding Article, the occupant levies other money taxes in the occupied territory, this can only be for military necessities or the administration of such territory.

Article L.

No general penalty, pecuniary or otherwise, can be inflicted on the population on account of the acts of individuals for which it can not be regarded as collectively responsible.

Article LI.

No tax shall be collected except under a written order and on the responsibility of a Commander-in-Chief.

This collection shall only take place, as far as possible, in accordance with the rules in existence and the assessment of taxes in force.

For every payment a receipt shall be given to the taxpayer.

ARTICLE LII.

Neither requisition in kind nor services can be demanded from communes or inhabitants except for the necessities of the army of occupation. They must be in proportion to the resources of the country, and of such a nature as not to involve the population in the obligation of taking part in military operations against their country.

These requisitions and services shall only be demanded on the authority of the Commander in the locality occupied.

The contributions in kind shall, as far as possible, be paid for in ready money; if not, their receipt shall be acknowledged.

ARTICLE LIII.

An army of occupation can only take possession of the cash, funds, and property liable to requisition belonging strictly to the State, depôts of arms, means of transport, stores and supplies, and, generally, all movable property of the State which may be used for military operations.

Railway plant, land telegraphs, telephones, steamers, and other ships, apart from cases governed by maritime law, as well as depôts of arms and, generally, all kinds of war material, even though belonging to Companies or to private persons, are likewise material which may serve for military operations, but they must be restored at the conclusion of peace, and indemnities paid for them.

ARTICLE LIV.

The plant of railways coming from neutral States, whether the property of those States, or of Companies, or of private persons, shall be sent back to them as soon as possible.

ARTICLE LV.

The occupying State shall only be regarded as administrator and usufructuary of the public buildings, real property, forests, and agricultural works belonging to the hostile State, and situated in the occupied country. It must protect the capital of these properties, and administer it according to the rules of usufruct.

ARTICLE LVI.

The property of the communes, that of religious, charitable, and educational institutions, and those of arts and science, even when State property, shall be treated as private property.

All seizure of, and destruction, or intentional damage done to such institutions, to historical monuments, works of art or science, is prohibited, and should be made the subject of proceedings.

SECTION IV.—ON THE INTERNMENT OF BELLIGERENTS AND THE CARE OF THE WOUNDED IN NEUTRAL COUNTRIES.

ARTICLE LVII.

A neutral State which receives in its territory troops belonging to the belligerent armies shall intern them, as far as possible, at a distance from the theatre of war.

It can keep them in camps, and even confine them in fortresses or locations assigned for this purpose.

It shall decide whether officers may be left at liberty on giving their parole that they will not leave the neutral territory without authorization.

ARTICLE LVIII.

Failing a special Convention, the neutral State shall supply the interned with the food, clothing, and relief required by humanity.

At the conclusion of peace, the expenses caused by the internment shall be made good.

ARTICLE LIX.

A neutral State may authorize the passage through its territory of wounded or sick belonging to the belligerent armies, on condition that the trains bringing them shall carry neither combatants nor war material. In such a case, the neutral State is bound to adopt such measures of safety and control as may be necessary for the purpose.

Wounded and sick brought under these conditions into neutral territory by one of the belligerents, and belonging to the hostile party, must be guarded by the neutral State, so as to insure their not taking part again in the military operations. The same duty shall devolve on the neutral State with regard to wounded or sick of the other army who may be committed to its care.

ARTICLE LX.

The Geneva Convention applies to sick and wounded interned in neutral territory.

* * * * * * *

And whereas the said Convention was duly ratified by the Government of the United States of America, by and with the advice and consent of the Senate thereof, and by the Governments of the other

Powers aforesaid with the exception of Sweden and Norway and Turkey;

And whereas, in pursuance of the stipulations of Article III of the said Convention the ratifications of the said Convention were deposited at The Hague on the 4th day of September, 1900, by the Plenipotentiaries of the Governments of Germany, Austria-Hungary, Belgium, Denmark, Spain, France, Great Britain, Italy, the Netherlands, Persia, Portugal, Roumania, Russia, Siam, and Bulgaria; on the 6th day of October, 1900, by the Plenipotentiary of the Government of Japan; on the 16th day of October, 1900, by the Plenipotentiary of the Government of Montenegro; on the 4th day of April, 1901, by the Plenipotentiary of the Government of Greece; on the 17th day of April, 1901, by the Plenipotentiary of the Government of Mexico; on the 11th day of May, 1901, by the Plenipotentiary of the Government of Servia; on the 12th day of July, 1901, by the Plenipotentiary of the Government of Luxembourg; and on the 5th day of April, 1902, by the Plenipotentiary of the Government of the United States of America:

Now, therefore, be it known that I, Theodore Roosevelt, President of the United States of America, have caused the said Convention to be made public, to the end that the same and every clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this eleventh day of April, in the year of our Lord one thousand nine hundred and two, and of [SEAL] the Independence of the United States the one hundred and twenty-sixth.

THEODORE ROOSEVELT

By the President:
DAVID J. HILL,
Acting Secretary of State.

APPENDIX C.

THE AMERICAN NATIONAL RED CROSS.

Whereas on the twenty-second of August, eighteen hundred and sixty-four, at Geneva, Switzerland, plenipotentiaries respectively representing Italy, Baden, Belgium, Denmark, Spain, Portugal, France, Prussia, Saxony, and Wurttemberg and the Federal Council of Switzerland agreed upon ten articles of a treaty or convention for the purpose of mitigating the evils inseparable from war; of ameliorating the condition of soldiers wounded on the field of battle, and particularly providing, among other things, in effect, that persons employed in hospitals and in according relief to the sick and wounded and supplies for this purpose shall be deemed neutral and entitled to protection; and that a distinctive and uniform flag shall be adopted for hospitals and ambulances and convoys of sick and wounded and an arm badge for individuals neutralized; and

Whereas said treaty has been ratified by all of said nations, and by others subsequently, to the number of forty-three or more, including the United States of America; and

Whereas the International Conference of Geneva of eighteen hundred and sixty-three recommended "that there exist in every country a committee whose mission consists in cooperating in times of war with the hospital service of the armies by all means in its power;" and

Whereas a permanent organization is an agency needed in every nation to carry out the purposes of said treaty, and especially to secure supplies and to execute the humane objects contemplated by said treaty, with the power to adopt and use the distinctive flag and arm badge specified by said treaty in article seven, on which shall be the sign of the Red Cross, for the purpose of cooperating with the "Comité International de Secours aux Militaires Blessés" (International Committee of Relief for the Wounded in War); and

Whereas in accordance with the requirements and customs of said international body such an association adopting and using said insignia was formed in the city of Washington, District of Columbia, in July, eighteen hundred and eighty-one, known as "The American

National Association of the Red Cross," reincorporated April seventeenth, eighteen hundred and ninety-three, under the laws of the District of Columbia, and reincorporated by Act of Congress in June, nineteen hundred; and

Whereas it is believed that the importance of the work demands a repeal of the present charter and a reincorporation of the society under Government supervision: Now, therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Clara Barton, Hilary A. Herbert, Thomas F. Walsh, Charles C. Glover, Charles J. Bell, Mabel T. Boardman, George Dewey, William R. Day, Nelson A. Miles, James Tanner, William K. Van Reypen, John M. Wilson, Simon Wolf, James R. Garfield, Gifford Pinchot, S. W. Woodward, Mary A. Logan, Walter Wyman, of Washington, District of Columbia; George H. Shields, of Missouri; William H. Taft, F. B. Loomis, Samuel Mather, of Ohio; Spencer Trask, Robert C. Ogden, Cleveland H. Dodge, George C. Boldt, William T. Wardwell, John G. Carlisle, George B. McClellan, Elizabeth Mills Reid, Margaret Carnegie, of New York; John H. Converse, Alexander Mackay-Smith, J. Wilkes O'Neill, H. Kirke Porter, of Pennsylvania; Richard Olney, W. Murray Crane, Henry L. Higginson, William Draper, Frederick H. Gillett, of Massachusetts; Marshall Field, Robert T. Lincoln, Lambert Tree, of Illinois; A. G. Kaufman, of South Carolina; Alexander W. Terrell, of Texas; George Gray, of Delaware; Redfield Proctor, of Vermont; John W. Foster, Noble C. Butler, Robert W. Miers, of Indiana; John Sharp Williams, of Mississippi; William Alden Smith, of Michigan; Horace Davis, W. W. Morrow, of California; Daniel C. Gilman, Eugene Lovering, of Maryland; J. Taylor Ellyson, of Virginia; Daniel R. Noyes, of Minnesota; Emanuel Fiske, Marshall Fiske, of Connecticut, together with five other persons to be named by the President of the United States, one to be chosen from each of the Departments of State, War, Navy, Treasury, and Justice, their associates and successors, are hereby created a body corporate and politic in the District of Columbia.

SEC. 2. That the name of this corporation shall be "The American National Red Cross," and by that name shall have perpetual succession, with the power to sue and be sued in courts of law and equity within the jurisdiction of the United States; to have and to hold such real and personal estate as shall be deemed advisable and to accept bequests for the purposes of this corporation hereinafter set forth; to adopt a seal and the same to alter and destroy at pleasure; and to have the right to have and to use, in carrying out its purposes hereinafter designated, as an emblem and badge, a Greek red cross on a white ground, as the same has been described in the treaty of Geneva, August twenty-second, eighteen hundred and sixty-four, and adopted by the several nations acceding thereto; to ordain and establish by-laws and regulations not inconsistent with the laws of the United States of America or any State thereof, and generally to do all such acts and things (including the establishment of regulations for the election of associates and successors) as may be necessary to carry into effect the provisions of this Act and promote the purposes of said organization; and the corporation hereby created is designated as the organization which is authorized to act in matters of relief under said treaty. In accordance with article seven of the treaty, the delivery of the brassard allowed for individuals neutralized in time of war shall be left to military authority.

Sec. 3. That the purposes of this corporation are and shall be—

First. To furnish volunteer aid to the sick and wounded of armies in time of war, in accordance with the spirit and conditions of the conference of Geneva of October, eighteen hundred and sixty-three, and also of the treaty of the Red Cross, or the treaty of Geneva, of August twenty-second, eighteen hundred and sixty-four, to which the United States of America gave its adhesion on March first, eighteen hundred and eighty-two.

Second. And for said purposes to perform all the duties devolved upon a national society by each nation which has acceded to said treaty.

Third. To succeed to all the rights and property which have been hitherto held and to all the duties which have heretofore been performed by the American National Red Cross as a corporation duly incorporated by Act of Congress June sixth, nineteen hundred, which Act is hereby repealed and the organization created thereby is hereby dissolved.

Fourth. To act in matters of voluntary relief and in accord with the military and naval authorities as a medium of communication between the people of the United States of America and their Army and Navy, and to act in such matters between similar national societies of other governments through the "Comité International de Secours," and the Government and the people and the Army and Navy of the United States of America.

Fifth. And to continue and carry on a system of national and international relief in time of peace and apply the same in mitigating the sufferings caused by pestilence, famine, fire, floods, and other great national calamities, and to devise and carry on measures for preventing the same.

Sec. 4. That from and after the passage of this Act it shall be unlawful for any person within the jurisdiction of the United States to falsely and fraudulently hold himself out as, or represent or pretend himself to be, a member of, or an agent for, the American National Red Cross, for the purpose of soliciting, collecting, or receiving money or material; or for any person to wear or display the sign of the Red Cross, or any insignia colored in imitation thereof for the fraudulent purpose of inducing the belief that he is a member of, or an agent for, the American National Red Cross. Nor shall it be lawful for any person or corporation, other than the Red Cross of America, not now lawfully entitled to use the sign of the Red Cross, hereafter to use such sign or any insignia colored in imitation thereof for the purposes of trade or as an advertisement to induce the sale of any article whatsoever. If any person violates the provisions of this section, he shall be guilty of a misdemeanor and shall be liable to a fine of not less than one nor more than five hundred dollars, or imprisonment for a term not exceeding one year, or both, for each and every offense. The fine so collected shall be paid to the American National Red Cross.

Sec. 5. That the governing body of the said American National Red Cross shall consist, in the first instance, of a central committee numbering eighteen persons, to be appointed in the manner following, namely: Six by the incorporators herein named and twelve by the President of the United States, one of whom shall be designated by the President to act as chairman. It shall be the duty of the central committee to organize with as little delay as possible State and Territorial societies, including the District of Columbia, under such rules as the said committee may prescribe. When six or more State or Territorial societies have been formed, thereafter the central committee shall be composed as follows: Six to be appointed by the incorporators, six by the representatives of the State and Territorial societies at the annual meeting of the incorporators and societies, and six by the President of the United States, one of whom shall be designated by him as chairman and one each to be named by him from the Departments of State, War, Navy, Treasury, and Justice.

The first six members of the central committee elected by the incorporators at the first annual meeting, and the first six members of the central committee elected by the State and Territorial delegates, shall when elected select by lot from their number two members to serve one year, two members to serve two years, and two members to serve three years, and each subsequent election of members shall be for a period of three years or until their successors are duly elected and qualify. The six members of the central committee appointed by the President at the annual meeting shall serve for one year.

The President shall fill as soon as may be any vacancy that may occur by death, resignation, or otherwise in the chairmanship or in the membership of the central committee appointed by him. And any vacancy that may occur in the six members of the central committee herein provided to be appointed by the incorporators or in the six to be appointed by the representatives of the State societies shall be filled by temporary appointments to be made by the remaining members of the six in which the vacancy or vacancies may occur, such appointees to serve until the next annual meeting.

The central committee shall have power to appoint from its own members an executive committee of seven persons, five of whom shall be a quorum, who, when the central committee is not in session, shall have and exercise all the powers of the central committee.

The Secretary of War shall within thirty days after the passage of this Act call a meeting at a time and place to be designated by him in the city of Washington of the incorporators hereunder, giving at least thirty days' notice thereof in one or more newspapers, and the annual meeting of said incorporators, their associates and successors, shall thereafter be held in said city on the first Tuesday after the first Monday in December, the first of said meetings to be held in December, nineteen hundred and five. Fifteen members shall constitute a quorum at any annual or special meeting.

Voting by proxy shall not be allowed at any meeting of the incorporators, annual or special, nor at any meeting of State or Territorial societies organized under the provisions of this charter.

SEC. 6. That the said American National Red Cross shall on the first day of January of each year make and transmit to the Secretary of War a report of its proceedings for the preceding year, including a full, complete, and itemized report of receipts, and expenditures of whatever kind, which report shall be duly audited by the War Department, and a copy of said report shall be transmitted to Congress by the War Department.

SEC. 7. That Congress shall have the right to repeal, alter, or amend this Act at any time. *Act of January 5, 1905* (*33 Stats., 599*).

(This act takes the place of the act of June 6, 1900, 31 Stats., 277. See pages 1044 to 1047 herein.)

INDEX.

[The references are to paragraphs unless pages are indicated. Articles of War are indicated by their numbers, the letters A. W. following the number of the article.]

Absence, 828a, 1287a. (See *Leaves of absence.*)
Accountability (see *Accounts*):
  property, 1742a.
Accountant, 847a. (See *Expert Accountant.*)
Accounting Officers (see *Accounts, Disbursing Officers,* and *Treasury Department*):
  allowances for losses, 605a.
  army appropriation, disbursement of, etc., 801a, 801d.
  closing of accounts, 605b.
  disbursement of army appropriation, 801a, 801d.
  limitation of accounts, 605b.
  paymasters' accounts, 801c, 801e.
Accounts (see *Disbursing Officers, Accounting Officers,* and *Treasury Department*):
  allowances for losses, 605a.
  appropriations for Army, 801a, 801d.
  disbursing officer, 605a, 605b.
  limitation of, 605b.
  militia, 1693a.
  paymasters, 801c, 801e.
  recorded by Paymaster-General, 801c.
Acquisition of Lands:
  historic, 1614b.
Acting Assistant Surgeon, 1417a. (See *Surgeons* and *Contract Surgeons.*)
Acts of the Philippine Commission, 2475–2488.
Adjutant-General's Department (see *Military Secretary's Department*):
  consolidation of, with Record and Pension Office, 663a.
  reestablishment of, 663d.
Alaska:
  "Alaska fund," 2498, 2499.
  bridges, 2498.
  collection of license fees, 2498.
  extension, etc., military telegraph system, 1233a.
  insane persons, 2498.
  liquor licenses, money collected for, 2498.
  military, telegraph, and cable lines, estimates for extension of, 1233a.
  public schools, 2498.
  road commissioners, 2499.
  sea travel, 841a.
  telegraph and cable lines, 1233a.
  wagon roads, bridges, etc., 2498, 2499.
Aliens. (See *Citizenship* and *Naturalization.*)
Allowances:
  assistant to Chief of Insular Bureau, 141d.
  cadets, 1485a.
  chaplains, 1258a.
  militia, 1662a, 1663a, 1693a.
  officers detailed with Philippine Constabulary, 1332a.
  Porto Rican Regiment, 505b.
Ammunition:
  morning and evening gun, 1184a.
Amusement Rooms. (See *Post Exchange.*)
Annual compensation. (See *Pay.*)
Antietam Battlefield:
  superintendent, 2422a.
Antiquities, 1614a–1614d. (See *Ruins, and Monuments.*)
Appointments:
  age limit, Regular Army, 1270a.
    Volunteer Army, 522a.
  Chief of Bureau of Insular Affairs, 141c.
  extending beyond date of retirement, 577a.
  Judge-Advocate-General's Department, 694a.
  Military Secretary's Department, 663a.
  Porto Rican Regiment, 505b.
  reappointments, 505b.
  Regular Army, age limit, 1270a.
  second lieutenants, 1270a.
  Signal Corps, 1218a, 1219a, 1222a.
  Volunteer Army, 522a.
    age limit, 522a.
Apportionment:
  appropriations, 272a.
  militia, 1670a.
Appropriations:
  allotments, 272a.
  amusement rooms, 715a.
  apportionment, 272a.
  army, how disbursed, etc., 801a.
    not available for militia, 1662b.
  available for two years, 279a.
  burial of indigent soldiers, 2460a.
  contract not to exceed, 272a, 272b.
  contract surgeons, 907a.
  deficiencies, 272a.
  District of Columbia Militia, 1770a.
  dredges, 1103a.
  emergencies, 272a.

Appropriations—Continued.
  expenditures in excess of, 272a, 272b.
  fortifications, 1086a, 1086b.
  general or indirect expenses, Ordnance Department, 1201c.
  gymnasium, 715a.
  libraries, 715a.
  lunch rooms, 715a.
  medals and trophies, 1201a.
  Military Secretary's Office, 663c.
  militia, 801b, 1662b, 1692a, 1700a, 1700b, 1700c.
    District of Columbia, 1770a.
    mileage allowances, 801b.
    not available for, 1662b.
    payments to, 801b.
  miscellaneous, 801a.
  morning and evening gun, 1184a.
  National Sanitarium, Hot Springs, S. Dak., 939a, 939b.
  "Ordnance stores, ammunition," etc., 279a.
  Panama Canal Zone, 1085b.
  paymasters' accounts, 801c.
  post exchange, 715a.
  post schools, 715a.
  reading rooms, 715a.
  restrictions on, 715a.
  river and harbor works, 1103a.
  schools, 715a, 1514a, 1515a, 1515b, 1519a.
  skilled draftsmen, 1161a.
  State Soldiers' Homes, 2321a, 2324a.
  superintendent of Antietam battlefield, 2422a.
Arlington National Cemetery:
  burial of indigent soldiers in, 2460a.
Armament. (See *Militia.*)
Arms. (See *Militia.*)
Army (see *Regular Army,* and *Volunteer Army*):
  acts of Philippine Commission, 2475–2488.
  annual compensation, monthly payments, 635a, 635b.
  appointments in Regular, 1270a.
  appointments in Volunteer, 522a.
  appropriation acts, monthly payments, 635a, 635b.
  appropriation, how disbursed and accounted for, 801d.
  appropriation not available for militia, 1662b.
  artillery reorganization, 1443b–1443k.
  chaplains, 1258a, 1258b, 1258c.
  chief of telegraph and cipher bureau, 1219a.
  civilian employees, medical supplies for, 934a.
  clothing balances, 753a.
  Coast Artillery, 1443b–1443h.
  computing time for retirement, 1379a.
  continuous-service pay, 869a.
  contract surgeons, 913a.
  Corps of Engineers, 953a.
  deposit fund, 879a.
  details to colleges, 1290a, 1291a.
  electricians, 1443a.
  examinations, 522a.

Army—Continued.
  extra-duty pay, 745a, 1510a.
  Field Artillery, 1443b–1443e, 1443i–1443k.
  forage, 741b.
  fuel, 740a.
  Hospital Corps, composition, 914a.
    organization, 924a.
    pay, 919a.
  leaves of absence, credit for volunteer service, 1287a.
  Lieutenant-General, office to cease, 555a.
  longevity pay, retired officers, 824a, 824b.
  material for tests, etc., 1215a.
  medals, contests for, 1201a.
  medical stores, purchase of, 932a.
  medical supplies, 934a.
  militia, appropriation not available for, 1662b.
  open-market purchases, 1169a, 1230a.
  Ordnance Department, pay of employees, 1192a.
  payments to, 801a.
  Philippine Islands (see *Philippine Islands*):
    acts of Congress relating to, 2496.
    attorneys, 2475.
    civilian witness, 2477.
    courts-martial, 2477.
    details to civil office, 2487–2490.
    elections, 2485a–2485c.
    government of Moro Province, 2487–2490.
    insane, 2348a.
    leave privileges, 2495.
    leaves of officers serving with constabulary, 2495.
    legal residence, 2485.
    locust pest, 2484.
    Moro Province, government of, 2487–2490.
    oath of office, 2493.
    persons disqualified from voting, 2485c.
    provincial officers, 2491.
    provost courts, 2476.
    public lands, 2480.
    qualifications of electors, 2485a–2485c.
    registration tax, 2486.
    restrictions on election or appointment to office, 2485b.
    right of eminent domain, 2483.
    sale of liquors, 2481, 2481a, 2482.
    tariff duties, 2112a, 2496, 2497.
    tax for roads, etc., 2492.
    toll roads and bridges, 2494.
    witness fees, 2477.
  post commissary-sergeants, 762a.
  post quartermaster-sergeants, 707a.
  retired enlisted men, 1379a.
  retired officers, longevity pay, 824a, 824b.
  retirement of enlisted men, 1381a.
  schools, 714a, 1514a, 1515a, 1515b, 1519a.
  Signal Corps, appointments, 1218a, 1219a, 1222a.
    details, 1222a.
    enlisted men, 1224a, 1224b.
    promotions, 1222a.

Army—Continued.
transfer of officers of line, 141e.
transportation in time of war, 720a.
troops in time of war, 720a.
trophies, contests for, 1201a.
volunteer service, credit for, on leaves of absence, 1287a.
War College, 1514a.
Army and Navy Union:
may wear distinctive badge, 1362a.
Army War College, 1514a. (See *Schools.*)
Arrest:
on reservations, Philippine Islands, 2480.
Articles of War:
militia subject to, 1671a.
Artillery Corps:
coast artillery, 1443b–1443h.
electrician sergeants, 1443a.
field artillery, 1443b–1443e, 1443i–1443k.
master electricians, 1443a.
number of colonels limited, 2473.
promotion, 1443c, 1443d.
reorganization, 1443b–1443k.
vacancies, filling of, 1443d.
Artillery School, 1519a.
Assignments (see *Details*):
civil employees at headquarters of divisions, etc., 573b.
coast artillery, 1443c.
contract surgeons, pay of, 909a.
dental surgeons, pay of, 909a.
field artillery, 1443c.
General Staff Corps, 2472.
militia, 1662e.
paymasters' clerks, 801e.
pay of commissioned officers, 811a, 909a.
Attorneys:
Philippine Islands, 2475.
Attorney-General (see *Habeas Corpus*):
habeas corpus in Philippine Islands, 361a.
Badges (see *Decorations, Medals of Honor,* and *Trophies*):
Army and Navy Union, 1362a.
Chinese relief expedition, 1363a.
penalty for improper use of, 1363b.
Bakers:
prizes, 714a.
Bands:
cavalry, 1424a.
Military Academy, 1508a.
Barracks (see *Fortifications* and *Posts*):
artillery troops, 1086a.
restrictions on expenditures, 1086a.
Bedding:
gratuitous issues, 750a.
Blanks:
manifold, etc., 68a.
Board:
commissioner of Soldiers' Home, 2263a, 2347a, 2347b.
engineers, 1098a.
hygienic laboratory, 910b.
Board of Engineers:
composition, 1098a.
duties, 1098a.
Board of Engineers—Continued.
officers for Volunteer Army, 522a.
river and harbor works, 1098a, 1103a.
Board of Ordnance and Fortifications:
material for tests, etc., 1215a.
Bond-Aided Railroads, 843a, 844a.
Bonds:
disbursing officer of militia, 1693a.
Books:
binding, cost of, 68c.
illustrations, 68f.
manifold processes, 68a.
military attachés, 58a.
military information division, 58a.
printing, cost of, 68c.
restrictions on, 68b.
purchases of, 58a.
Bridges:
Alaska, 2498.
amendments, etc., of act, 1117e.
changes, 1115a.
draws, etc., 1115a.
lawful structures and post routes, 1114a.
lights, etc., 1115a.
litigation, 1114f, 1115b.
obstructions to navigation, 1115a.
penalties, 1115b.
"persons" defined, 1117d, 1119b.
Philippine Islands, 2494.
Porto Rico, time limit, 1119c.
telegraph and telephone rights, 1114a.
time limit, 1117c, 1119c.
tolls, 1115a.
use of, by other companies, 1117b.
Buildings:
permits, District of Columbia, 980a.
Burial (see *Deceased Officers and Soldiers,* and *Funeral Expenses*):
deceased pensioners, 2136a.
indigent soldiers, 2460a.
officers, 1417a.
transportation of remains, 1416a, 1417a, 1418a.
Cadets (see *Military Academy*):
allowances, 1485a.
appointments, 1479a.
date of admission, 1480b.
pay, 1485a.
promotion to Corps of Engineers, 953a.
traveling expenses of candidates, 1480a.
California Débris Commission:
expenses, 1061a.
favorable decision within thirty days, 1061a.
hydraulic mining, 1061a.
mileage, 1081a.
order directing methods of mining, 1061a.
taxes on gross proceeds, 1061a.
Canal Zone at Panama (see *Panama Canal Zone,* and *Isthmian Canal Commission*):
alien labor, eight-hour law not applicable to, 1085m, 1085n, 1573a, 1573b.
articles, etc., imported from, 1085k.

Canal Zone at Panama—Continued.
  eight-hour law, 1085m, 1085n, 1573a, 1573b.
  entry of persons into United States from, 1085k.
  imports from, 1085k.
  purchase of, etc., 1085b.
  tariff laws, 1085k.
Canals (see *Isthmian Canal, Navigable Waters,* and *River and Harbor Works*):
  regulations for use of, 1113a, 1117a.
    enforcement of, 1117a.
Carriages:
  restrictions on, 100a, 100b.
Cavalry Band, 1424a.
Chaplains:
  coast artillery, 1258c.
  Corps of Engineers, 1258b.
  field artillery, 1258c.
  pay, 1258a, 1258c.
  promotions, limitations on, 1258a.
  rank, 1258a, 1258c.
  special distinction for efficiency, 1258a.
  uniform, 1258a.
Checks:
  duplicate, 631a.
  lost, etc., 631a.
Chief of Artillery:
  additional member of General Staff Corps, 2474a.
  rank, pay, etc., upon retirement, 2474a.
  vacancies, how filled, 2474a.
Chief of Bureau of Insular Affairs:
  appointment, rank, pay, etc., 141c.
  assistant to, 141d.
Chief of Coast Artillery:
  additional member of General Staff Corps, 2474a.
  rank, pay, etc., upon retirement, 2474a.
  vacancies, how filled, 2474a.
Chief of Engineers:
  Board of Engineers, 1098a.
  river and harbor works, 1098a, 1103a.
Chief of Ordnance:
  indirect expenses, method of charging, 1201c.
  skilled draftsman, 1161a.
Chief of Staff:
  civilian details prohibited, 573b.
Chief of Telegraph and Cipher Bureau, 1219a. (See *Signal Corps.*)
Citizenship (see *Naturalization*):
  anarchists, etc., forbidden, 1892b.
  cancellation of certificate of, 1892e.
  certificate of, cancellation of, 1892f.
  certificates of, penalty for issuing false, 1892g.
  children born abroad, 1871a, 1889a.
  enlistment of Porto Ricans, 505a.
  expatriation, 1877a.
  married women, 1872a.
  minors, 1871a, 1880b, 1889a.
  naturalization, 1892a.
  naturalized citizens residing abroad, 1877a.
  passports, 1879a.
Citizenship—Continued.
  penalty for issuing false certificates of, 1892g.
  polygamists, etc., forbidden, 1892b.
  residence abroad of naturalized persons, 1877a.
  time of war, 1877a.
Civilians:
  assignments office of Chief of Staff, 573b.
  details, office of Chief of Staff, 573b.
    office of General Staff, 573a.
  employees of Army, medical supplies, 934a.
  employees of Army, transportation of remains, 1418a.
  enlistment of, in Porto Rico, 505a, 505b.
  physicians, 909b.
  witnesses on courts-martial, Philippine Islands, 2477.
Civil War:
  honorable discharge, effect of, 2201a, 2201b.
Clerks and Messengers at Headquarters:
  assignment of, to duty in War Department, 573b.
  number, 572a.
  pay, 572a.
Clerks, Executive Department:
  details, 11a, 28a.
  headquarters, 572a.
  incapacitated, restriction, 31a.
  Ordnance Department, 1192a.
  pay, 572a, 635a, 635b, 1192a.
  transfers, 28b.
Clothing:
  balances, 753a.
  destroyed to prevent disease, 950b.
  donations to prisoners, 1788b.
  gratuitous issues, 750a.
Clubs, Rifle, 1700e, 1700f. (See *Militia,* and *Rifle Clubs.*)
Coast Artillery:
  additional pay, 1443e.
  assignments, 1443c.
  bands, 1443g.
  chaplains, 1258c.
  chief of, 1443b.
  composition of companies, 1443h.
  corps, 1443h.
  corps, to constitute, 1443g.
  duties, 1443f.
  electricians, etc., additional pay of, 1443e.
    maximum number, 1443e.
    pay of, 1443g.
  enlisted strength, 1443h.
  noncommissioned staff officers, pay of, 1443e.
  number of officers, 1443g.
  organization, 1443g.
  promotion, 1443c, 1443d.
  reorganization, 1443b.
  separation from field artillery, 1443c.
  vacancies, filling of, 1443d.
Coast Artillery Corps:
  composition of, 1443h.

Colleges (see *Details*, and *Retired Officers*) :
  issues of ordnance and ordnance stores to, 1292a, 1292b.
  officers, commutation of quarters, 830a.
    details, 1290a, 1291 a.
    extra duty pay, 1291a.
  ordnance, etc., issues to, 1292a.
Command:
  militia, 1662a.
Commercial Intercourse, 2112b.
Commissioned Officers:
  additional, to Signal Corps, 1218a, 1219a.
  appointments extending beyond date of retirement, 577a.
  appointments in Volunteer Army, 522a.
  assignments of pay, 811a, 909a.
  assignments to militia, 1662e.
  assistant to Chief of Insular Bureau, 141d.
  deceased officers, 1416a, 1417a.
  details extending beyond date of retirement, 577a.
    of officers of line, 141e.
    to civil offices in Philippine Islands, 2487, 2488.
    to colleges, 1290a, 1291a.
    to Philippine Constabulary, 1332a.
  horses, purchase of, 741a.
  Military Secretary's Department, 663a, 663b.
  militia, assignments to, 1662e.
  mounted, purchase of horses from, 741a.
  pay of retired officers assigned to active duty, 1303b.
  retired, assignment to active duty, 1303a.
    details to colleges, 1290a, 1291a.
    details to militia, 1323a.
    increase of rank and pay, 1303a.
  sales of fuel to, 740a.
  service of generals before retirement, 1299a.
  Signal Corps, additional to, 1218a, 1219a.
  transfers of, 141e, 811a, 909a.
  transportation of remains, 1416a, 1417a.
  Volunteer Army, 522a.
Commutation of Quarters:
  militia officers, 1663a.
  officers of Regular Army, 830a.
Congress of Navigation, 141a.
Contingent Expenses:
  military attachés abroad, 58a.
  military information division, 58a.
  newspapers, 58a.
  periodicals, 58a.
Continuous Service (see *Pay*) :
  enlisted men as commissioned officers of volunteers, 869a.
  Philippine Scouts, 869a, 869b.
  Porto Rican Regiment, officers of, 869a.
Contract Surgeons (see *Surgeons*) :
  appropriations, 907a.
  assignment of pay, 909a.
  burial expenses, 1417a.
  dental surgeons, assignment of pay by, 909a.
  hospitals in charge of, 913a.
  pay, assignment of, 909a.
Contract Surgeons—Continued.
  sea travel, 841a.
  transfer of pay, 909a.
  transportation of remains of, 1417a.
Contracts:
  Isthmian Canal, 1085d, 1085e.
  labor and material, protection of, 1576a.
  not to exceed appropriation, 272a, 272b.
Cooks:
  prizes, 714a.
  Signal Corps, 1224b.
Corps of Engineers (see *Engineer Corps, Engineer Department*, and *Chief of Engineers*) :
  chaplains, 1258b.
  composition, 953a.
  details, 1098a.
  enlisted force, 953a.
  organization, 953a.
  public buildings and grounds, 978a, 978b.
  rank, 953a.
  vacancies, 953a.
  Washington Monument, 990a.
Courts-Martial:
  civilian witnesses, Philippine Islands, 2477.
  militia, 1672a.
  witness fees, Philippine Islands, 2477.
Dams:
  damages to private property, 1114d.
  fishways, 1114d.
  forfeiture of rights, 1114e.
  lights, signals, etc., 1114d.
  penalties, 1114f.
  "persons" defined, 1114i.
  regulations for construction of, 1114b.
  removal of, 1114f.
  rights forfeited, 1114e.
  rights reserved for navigation, 1114c.
  right to alter, etc., reserved, 1114h.
  time limit, 1114g.
Débris Commission, 1061a, 1081a. (See *California Débris Commission.*)
Deceased Officers and Soldiers (see *Burial*) :
  accounts, settlement of, 1415a.
  funeral expenses, 1415a.
  transportation of remains, 1416a, 1417a, 1418a.
Decorations, 1356a, 1356b. (See *Badges, Medals,* and *Medals of Honor.*)
Deeds:
  acknowledgment of, 1599d.
Dental Surgeons:
  assignment of pay, 909a.
  Military Academy, 908a.
  number authorized, 908a.
  sea travel, 841a.
Department of Commerce and Labor, 1028b.
Department of Justice (see *Attorney-General*) :
  habeas corpus, Philippine Islands, 361a.
Departments. (See *Executive Departments.*)
Depositories (see *Treasury, Public Moneys,* and *Philippine Islands*) :
  in Philippine Islands, 290a.

Deposits:
enlisted men, 879a.
funds for stores tranferred to Insular Department, 607a.
savings of enlisted men, 879a.
Deserters (see *Prisoners,* and *Reward*):
apprehension, 1409a.
reward, 1409a.
Details (see *Army, Appointments, Commissioned Officers,* and *Enlisted Men*):
assistant to chief of Insular Bureau, 141d.
civil employees, 11a, 28a, 28b.
  divisions, departments, and office of Chief of Staff, 573b.
  General Staff, 573a.
  office in Philippine Islands, 2487–2490.
colleges, 1290a, 1291a.
Corps of Engineers, 1098a.
dental surgeon to Military Academy, 908a.
extending beyond date of retirement, 577a.
General Staff Corps, 2470, 2472.
Military Secretary's Department, 663a.
militia, 1662d, 1662e.
noncommissioned officers, 1290a, 1291a.
officers, as chief, etc., Philippine Constabulary, 1332a.
officers in Ordnance Department, 1155a.
officers of the line, 141e.
Ordnance Department, 1155b.
paymasters' clerks, 801e.
Porto Rican Regiment, 505b.
retired officers, 1290a, 1291a, 1323a.
  with organized militia, 1323a.
river and harbor works, 1103a.
Signal Corps, 1222a.
Disbursing Officers (see *Accounts, Accounting Officers,* and *Treasury Department*):
accounts, closing of, 605b.
  limitation of, 605b.
  of payments to Army, 801c, 801d.
  recorded by Paymaster-General, 801c.
allowances for losses, 605a.
annual compensation, 635a, 635b.
army appropriation, how disbursed, etc., 801a, 801d.
check, duplicate, 631a.
  lost, etc., 631a.
closing of accounts, 605b.
credits for payments and for losses, 605a.
limitation of accounts, 605b.
lost check, 631a.
militia, 1693a.
pay of the Army, disbursement of, etc., 801a.
paymasters' accounts, 801c.
payments of small amounts, 768a.
small purchases, 768a.
Discharge. (See *Pensions.*)
Discharge Certificate:
duplicate, in lieu of lost or destroyed, 1388a.
Discharged Soldiers:
transportation of remains of, 1418a.
District of Columbia:
acknowledgment of deeds, etc., 1599d.
building permits, 980a.
public buildings and grounds, 978a, 978b.
District of Columbia Militia (see *Militia,* and *Naval Battalion*):
adjutant-general, 1664a.
apportionment, 1691b.
appropriation, 1691b, 1770a.
camp expenses, 1770a.
deductions of pay, 1742a, 1750a.
expense, 1770a.
minimum quota required, 1691b.
National Guard, 1742a, 1750a, 1770a.
naval battalion, 1781a.
pay, deductions from, 1742a, 1750a.
property lost or destroyed, 1696a, 1742a.
sale of unserviceable property, 1696a.
unserviceable property, 1696a.
Documents:
binding, cost of, 68c.
extra copies, 68d.
illustrations, etc., 68f.
printing, cost of, 68c.
restrictions on, 68b.
Donations to Prisoners, 1788a, 1788b.
Draftsmen:
office of Chief of Ordnance, 1161a.
Signal office, 1224c.
Duplicating Processes, 68a.
Duties:
Philippine Islands, 2112a.
Eight-Hour Law:
alien labor within Canal Zone, 1085m, 1085n, 1573a, 1573b.
Canal Zone, 1085m, 1085n, 1573a, 1573b.
Electric Plants:
sale of surplus light and power, 719a.
  use of proceeds, 719a.
Electricians, 1224b, 1443a. (See *Signal Corps.*)
Eminent Domain, 2483.
Employees:
transportation of remains of, 1418a.
Employment of Military Force:
commercial intercourse during hostilities, 2112b.
extradition, 2093a, 2093b.
restriction on employment of, 2103a.
tariff duties and taxes, 2112a.
Engineer Corps (see *Chief of Engineers, Bridges, Dams,* and *Engineer Department*):
composition, 953a.
Engineer Department:
board of engineers, 1098a.
bridges over navigable waters, 1114a, 1117c, 1117d, 1117e, 1119b.
canals, etc., regulations for use of, 1113a, 1117a.
dams, 1114b, 1114c, 1114d, 1114e, 1114f, 1114g, 1114h.
dredges, 1103a.
fortifications, 1086a, 1086b.

Engineer Department—Continued.
Isthmian Canal Commission, 1085a.
Light-House Board, 1028a.
Niagara Falls, 1150a, 1150b, 1150c, 1150d.
Panama Canal Zone, 1085b.
river and harbor works, 1098a, 1103a, 1106a, 1113a, 1117a.
sale of public lands, 1106a.
of unserviceable property, 1106a.
telegraph and telephone lines, 1114a.
transfer of property, 1106a.
Engineer School, 1515a, 1515b.
Enlisted Men (see *Enlistments,* and *Reenlistments*):
commissioned officers, service as, 869a.
continuous service, 869a, 869b.
deceased, accounts of, 1415a.
deposit of savings, 879a.
details to colleges, 1290a, 1291a.
electricians, 1224b, 1443a.
extra-duty pay, 745a, 1510a.
funeral expenses, 1415a.
gunners, additional pay, 862a.
Hospital Corps, composition, 914a.
pay, 919a.
ice, 769a.
issues of rations, 769a.
medical attendance, 909b.
pay and allowances, 505b, 862a, 919a.
Porto Rican Regiment, 505b.
prizes, 714a.
rations, 769a.
remains of honorably discharged, 1418a.
retired, details to colleges, 1290a, 1291a.
extra-duty, pay, 1291a.
increase of rank and pay, 1303a.
retirement, 869a, 1381a.
service as commissioned officer, 869a.
Signal Corps, 1224a, 1224b.
transportation of remains of, 1416a–1418a.
Enlistments (see *Enlisted Men,* and *Reenlistments*):
civilian physicians, 909b.
Porto Rico Regiment, 505a, 505b.
Envelopes, 68e.
Epidemics:
clothing, etc., destroyed, 950b.
Equipments. (See *Militia.*)
Estimates:
Book of, 64a.
changes to be noted, 64a.
duplicating processes, etc., 68a.
employees of signal office, 1224c.
extension of cable, etc., in Alaska, 1233a.
Isthmian Canal, 1085c.
manner of preparing, 64a.
preceding year a guide, 64a.
printing and binding, 68e.
restrictions on special, 64a.
skilled draftsmen, etc., signal office, 1224c.
Examinations:
Ordnance Department, 1155a, 1155b.
officers for Volunteer Army, 522a.
Porto Rican Regiment, 505b.
Volunteer Army, officers for, 522a.
Executive Departments:
annual statement to Congress, 75a.
books, cost of printing and binding, 68c.
books, restrictions on printing, 68b.
carriages, restrictions on, 100a, 100b.
civil employees, 11a, 28a, 28b, 31a.
details of, 11a, 28a, 28b.
incapacitated, 31a.
transfer of, 28b.
clerks and messengers, 11a, 28a, 28b, 31a, 572a.
details of civil employees, 11a, 28a, 28b.
documents, cost of printing and binding, 68c.
extra copies, 68d.
illustrations, 68f.
restrictions on printing, 68b.
duplicating processes, etc., 68a.
estimates, 64a, 68e.
proceeds of public property, 75a.
reports, cost of printing and binding, 68c.
extra copies, 68d.
illustrations, 68f.
statement to Congress, 75a.
transfers, 28b.
Executive Office:
chief of telegraph and cipher bureau, 1219a.
Expenses:
militia, encampments and maneuvers, 1692b.
Expert Accountant:
Inspector-General's Department, 847a.
sea travel, 847a.
travel allowances, 847a.
Expert Riflemen:
additional pay, 865a, 865b.
Extortion, 1566a.
Extra-Duty Pay, 1291a. (See *Pay.*)
Extradition, 2093a, 2093b, 2093c.
Fees:
civilian witnesses, 2477.
justices of the peace, 2481.
Field Artillery:
additional pay, 1443e.
assignments, 1443c.
batteries, increase in strength of, 1443k.
chaplains, 1258c.
composition of batteries, 1443k.
defined, 1443i.
detail of officers, 1443j.
electricians, etc., additional pay of, 1443e.
maximum number, 1443e.
gunners, additional pay, 862a.
increase of mounted orderlies, 1443j.
of, in strength of batteries, 1443k.
limit to enlisted strength, 1443k.
noncommissioned staff officers, pay of, 1443e.
organization, 1443j.
promotion, 1443c, 1443d.
regimental strength, increase of, 1443j.
reorganization, 1443b.
separation from coast artillery, 1443c.
vacancies, filling of, 1443d.

Field Officer:
Porto Rican Regiment, 505b.
Filing Devices, 68a. (See *Estimates.*)
Forage, 741b.
Fort Bayard, N. Mex.:
hospital at, admission to, 939c.
rules governing, 931a.
Fortifications:
advertisements, 1086b.
artillery troops, 1086a.
contracts, 1086b.
material for experiments and tests, 1215a.
method for charging indirect expenses, 1201c.
purchase of sites, 1086a.
restrictions on expenditures, 1086a.
skilled draftsmen, etc., signal office, 1224c.
Forms:
duplicating processes, etc., 68a.
Fuel:
sales to officers, 740a.
Funds:
credits for deductions from carriers for loss, etc., of stores, 1178a, 1640a.
depositories of public moneys, 290a.
from stores transferred to Insular Department, 607a.
Funeral Expenses (see *Burial*):
deceased pensioner, 2136a.
indigent soldiers, 2460a.
officers, 1417a.
Furloughs:
medical treatment, 933a.
General Courts-Martial (see *Courts-Martial*):
civilian witnesses, Philippine Islands, 2477.
General Officers:
Lieutenant-General, 555a.
General Service and Staff College, 1519a. (See *Schools.*)
General Staff:
civilian details prohibited, 573a.
General Staff Corps:
aids-de-camp, 2474.
assignments, temporary, 2471.
captains, rank, pay, etc., 2471.
Chief of Artillery, an additional member of, 2474a.
rank, pay, etc., 2474.
upon retirement, 2474a.
to serve on, 2474.
Chief of Coast Artillery, rank, pay, etc., upon retirement, 2474a.
Chief of Staff, duties of, 2473.
composition, 2471.
details, 2471.
duties, 2472–2474.
establishment, 2470.
lieutenants, rank, pay, etc., 2471.
military secretaries, 2473.
organization, 2470.
pay and allowances, 2471, 2474.
rank, pay, and allowances, 2471, 2474.
temporary assignments, 2471.
terms of service, 2471.
Gettysburg National Park:
monuments, 2391a, 2391b.
Good Conduct Allowances (see *Penitentiary*):
United States prisoners, 1837a, 1837b, 1837c.
Government Agents:
official misconduct, 1566a.
Government Hospital for the Insane:
admissions, 2347a, 2347b, 2348a.
insane natives of Philippine Islands in Army, 2348a.
insane soldiers, pensions of, 2347a, 2347a, note, 2347b.
pension of soldier inmates, 2347a, 2347a, note, 2347b.
Grand Army of the Republic:
penalty for improper use of badge of, 1363b.
Gratuitous Issues:
clothing to prisoners, 1788b.
bedding, etc., 750a.
Gunners:
additional pay, 862a.
Gymnasium, 715a.
Habeas Corpus:
Philippine Islands, 361a, 2478, 2479.
Hague Convention:
laws and customs of war on land, Appendix B, pages 1315–1329.
maritime warfare, Appendix A, pages 1309–1314.
Hawaii:
public lands, 1625a.
sea travel, 841a.
Heads of Departments:
appointments extending beyond date of retirement, 577a.
details extending beyond date of retirement, 577a.
Heat, 740b.
Historic Ruins, 1614a–1614d. (See *Ruins.*)
Homesteads, 1587a.
Honorably Discharged Soldiers:
homestead rights, 1587a.
transportation of remains of, 1418a.
Horses:
forage, 741b.
open-market purchases, 732a.
purchase of, from officers, 741a.
Hospital Corps:
composition, 914a.
corporals, 914a, 919a.
organization, 924a.
pay, 919a.
privates, 914a, 919a.
rank, 919a.
sergeants, 914a, 919a.
Hospitals (see *Hospital Corps, Government Hospital for the Insane,* and *Medical Department*):
contract surgeons, 913a.
Fort Bayard, N. Mex., 931a, 939c.
furloughs, 933a.
private, 933a.
sales of medical supplies, 935a.
Hot Springs, S. Dak.:
national sanitarium at, 939a, 939b.

Hygienic Laboratory:
  advisory board, 910b.
Ice:
  issues of, 769a.
Ice Machines:
  disposal of surplus products, etc., 719a.
Illustrations, 68f.
Indian Wars (see *Pensions*):
  pension for service in, 2167a, 2167b.
Infantry:
  Porto Rican Regiment, 505b.
Insane, 2347a, 2347b, 2348a, 2498. (See *Government Hospital for the Insane.*)
Inspections:
  militia 1662c.
    report of, 1693a.
Inspector-General's Department:
  expert accountant, 847a.
Insular Affairs (see *Insular Affairs, Bureau of; Insular Department,* and *Insular Possessions*):
  Acts of Philippine Commission, 2475–2488.
Insular Affairs, Bureau of (see *Insular Affairs, Insular Department,* and *Insular Possessions*):
  assistant to Chief of, 141d.
  business assigned to, 141b.
  chief of, appointment, rank, pay, etc., of, 141c.
  detail of officer as chief of, 141b.
  pay of chief of, 141b.
  rank of chief of, 141b.
Insular Department (see *Insular Affairs, Bureau of,* and *Insular Possessions*):
  military stores transferred to, 607a.
Insular Possessions (see *Insular Affairs, Bureau of*):
  commercial intercourse during hostilities, 2112b.
  extradition, Philippine Islands, 2093a, 2093b.
  tariff duties and taxes, 2112a.
International Commission, 141a.
Issues:
  rations, etc., 769a.
  ice, etc., 769a.
  clothing, 750a, 1788b.
Isthmian Canal:
  alien labor, eight-hour law not applicable to, 1085m, 1085n, 1573a, 1573b.
  annual reports, 1085f.
  appropriations, limitations on, 1085g.
    restrictions on, 1085f.
  bonds, 1085c, 1085d, 1085e.
  contracts, 1085g, 1085h.
  detail of officers and employees away from Isthmus, 1085i.
  eight-hour law, 1085m, 1085n, 1573a, 1573b.
  estimates, 1085f.
  expenditures, 1085d.
  material restricted to domestic production, 1085j.
  pay while detailed away from Isthmus, 1085i.
  reports, 1085f.
Isthmian Canal Commission, 1085a, 1085b. (See *Isthmian Canal* and *Panama Canal Zone.*)
Judge-Advocate General's Department:
  appointments, age limit, 694a.
  vacancies, how filled, 694a.
Jurisdiction:
  reservations in Philippine Islands, 2480.
Justice of the Peace, Philippine Islands, 2481.
Labor and Material:
  protection to persons furnishing, 1576a.
Land and Submarine Mines, 1515b.
Land-Grant Railroads, 843a, 844a.
Lands (see *Public Lands*):
  condemnation proceedings, 1106b.
  Hawaii, 1625a.
  historic, acquisition of, 1614b.
    regulations concerning, 1614d.
    reserving, 1614b.
  Philippine Islands, laws concerning, 2480.
    public 1599a, 1599b, 1599c, 2480.
    right of eminent domain, 2483.
  sale of, 1106a.
Laundries:
  outside work permitted, 719a.
    use of proceeds, 719a.
Laws of War, 2112a, 2112b.
Leaves of Absence:
  change of station, 840b.
  credit for volunteer service in computing, 1287a.
  mileage on change of station, 840b.
  officers serving with Philippine Constabulary, 2495.
  Philippine Islands, 828a.
Libraries:
  engineer school, 1515b.
  post libraries, 715a.
Lieutenant-General:
  office to cease, 555a.
Light, 740b.
Light-House Board (see *Department of Commerce and Labor*):
  transfer to Department of Commerce and Labor, 1028a.
Liquors:
  moneys collected for licenses in Alaska, 2498.
  sale of, in Philippine Islands, 2481, 2481a, 2482.
    on reservations, Philippine Islands, 2480.
    prohibited at State soldiers' homes, 2324a.
Loans:
  ordnance, etc., to State schools, etc., 1292a, 1292b.
Locusts, Extermination of, 2484.
Longevity Pay (see *Pay,* and *Retired Officers*):
  retired officers, 824a, 824b.
Manifold Processes, 68a.
Marine Corps:
  computing time for retirement, 1379a.
  contests for medals, etc., 1201a, 1201b.

Marine Corps—Continued.
  medals and troophies, contests for, 1201a.
  pay, retired enlisted men, 1379a.
  retired enlisted men, 1379a.
Master Electricians, 1224b, 1443a. (See *Signal Corps.*)
Materials:
  domestic preferred, 1085j.
  protection to persons furnishing, 1576a.
Medals:
  contests for, 1201a, 1201b.
  surrendered medals of honor to be returned, 1356c.
Medals of Honor, 1356a, 1356b, 1356c. (See *Medals, Decorations*, and *Badges.*)
Medical Department (see *Surgeon-General of the Army*, and *Surgeons*) :
  bedding, etc., destroyed, 950b.
  civilian employees, 934a.
  civilian physicians, 909b.
  contagious diseases, 950b.
  contract surgeons, 907a, 909a, 913a.
    assignment of pay, 909a.
  dental surgeons, assignment of pay, 909a.
  epidemics, 950b.
  furloughs, 933a.
  Hospital Corps, compensation, 914a.
    organizations, 924a.
    pay, 919a.
    rank, 919a.
  medical supplies for civilian employees of Army, 934a.
  medical treatment, exceptions, 933a.
  purchases, 932a.
  sales of medical supplies, 935a.
  services not personal, 932a.
  stores, purchases of, 932a.
Mexican War Pensions, 2166a, 2151a, 2151b, 2151c.
Mileage (see *Travel Allowances*) :
  California Débris Commission, 1081a.
  change of station, 840b.
  deductions from, 843a.
  expert accountant, 847a.
  militia, 801b.
  officers traveling without troops, 840a.
  paymasters' clerks, 847a.
  transportation requests, 843a.
Military Academy (see *Cadets*) :
  academic staff, 1471a.
  associate professors, 1458a, 1471a.
  band, 1508a.
  cadets, appointments, 1479a.
    date of admission, 1480b.
    expenses of candidates, 1480a.
    pay and allowances, 1458b.
  civilian instructors in French, 1458b.
    in Spanish, 1458b.
  dental surgeon, 908a.
  organization, 1458a, 1458b.
  professors, 1458a, 1458c, 1471a.
  rank, 1471a.
Military Attachés, 58a.
Military Establishment (see *Volunteers*, and *Volunteer Army*) :
  organization of volunteer forces, 518a.
Military Force:
  restriction on employment of, 2103a.
Military Information Division:
  Manila branch, purchase of books, etc., 58a.
Military Occupation, 2112a, 2112b.
Military Order of the Loyal Legion:
  penalty for improper use of badge of, 1363b.
Military Posts:
  restrictions on establishment of, 734a, 1621a.
Military Prisoners (see *Prisoners*) :
  donation of clothing to, 1788b.
    of money to, 1788a.
  reward for apprehension of escaped, 1409a.
  transportation of discharged, 1788c.
Military Reservations, 1599a, 1625a, 2480. (See *Reservations*, and *Public Lands.*)
Military Schools (see *Schools*) :
  appointments to Volunteer Army, 522a.
Military Secretary's Department (see *Military Secretary's Office*) :
  appointments, 663a.
  appropriation, 663c.
  changed to Adjutant-General's Department, 663d.
  chief of, a member of Board of Commissioners of Soldiers' Home, 2263a.
  commissioned officers, 663b.
  composition, 663a.
  details, 663a.
  employees, 663c.
  Military Secretary, rank of, 663a.
  officers, effect of consolidation, 663b.
  officers subject to Chief of Staff, 663a.
  promotions, 663a.
  rank, 663a.
Military Secretary's Office, 663a, 663b, 663c, 663d. (See *Military Secretary's Department.*)
Military Storekeeper, 706a.
Military Stores, 607a, 1178a. (See *Funds, Ordnance Department, Sales*, and *Stores.*)
Military Telegraph and Cable Lines:
  Alaska, estimates for extension of, etc., 1233a.
Military Traffic:
  time of war, 720a.
Militia (see *District of Columbia Militia, National Guard*, and *Naval Battalion* :
  accounts, 1693a.
  accouterments, issue of, 1700a.
  active service, 1669a, 1670a, 1671a, 1672a, 1673a, 1674a.
  actual service, allotments, 1693a.
  adjutant-general, 1664a.
  allotment, 1693a.
  allowances, 1662a, 1663a.
  ammunition, 1699a, 1700a.
    exchange of, 1700a.
    issue of, 1700a.
  annual drill, 1662c.
  appointments to Volunteer Army, 522a.
  apportionments, 1670a, 1691b.

Militia—Continued.
appropriations, 1692a, 1700a, 1700b, 1700c.
armament, 1692a, 1692b, 1693a, 1699a, 1700a, 1700b, 1700c.
arms, etc., for, 1691a.
  accountability, 1694a, 1696a, 1700a, 1700b, 1700c.
  exchange of, 1700a.
  issue of, 1700a, 1700b, 1700c.
  issues of new type of, 1700d.
  manufacture of, 1694a.
  property of the United States, 1700a, 1700b, 1700c.
  purchase of, 1694a.
  sale of unserviceable, 1696a.
army appropriation not available for, 1662b.
Army War College, 1514a.
Articles of War, 1671a.
assignment of army officers, 1662e.
calling forth, 1669a.
camp equipage, 1691a.
cannon, authority to issue, repealed, 1705a.
command, 1662a.
commutation of quarters, 1663a.
composition, 1651a, 1651b.
contests for medals, etc., 1301a, 1301b.
courts-martial, 1672a.
detail of army officers, 1662d, 1662e.
disbursing officers, 1693a.
District of Columbia, 1662f, 1691b, 1694a, 1696a, 1742a, 1750a, 1770a.
encampment, allowance for, 1691b.
  expenses of, 1692b.
  participation in, 1662a.
  with regular, 1662f.
enrollment, 1651a, 1651b.
equipments, 1692a, 1692b, 1693a, 1699a, 1700a, 1700b, 1700c.
exemptions, 1655a, 1655b.
expenses, 801b, 1692b.
field artillery material, 1700c.
fund created, 1692b.
horses, etc., 1691b.
inspection, 1662c, 1691b.
instruction, 1662a, 1662b, 1662c, 1662d, 1662e, 1663a, 1699a.
issues of new types of arms, 1700d.
maneuvers, etc., expenses of, 1692b.
manufacture of arms, etc., 1694a.
mileage allowances, 801b.
minimum quota required, 1691b.
muster, 1674a.
National Guard, 1651b.
  District of Columbia, 1742a, 1750a, 1770a.
naval battalion, 1781a.
new types of arms, 1700d.
officers for Volunteer Army, 522a.
ordnance, authority to issue repealed, 1705a.
organization, 1656a, 1657a, 1661a.
pay, rations, etc., 801b, 1662a, 1662f, 1681a, 1683a, 1693a.
pensions, 1687a.

Militia—Continued.
period of active service, 1673a.
President may call out, 1669a.
privileges of certain corps, 1661a.
property accountability, 1694a, 1696a, 1700a, 1700b, 1700c.
  returns, 1700a, 1700b, 1700c.
publications, 1692a.
punishment for not answering calls, 1674a.
purchases, 1692a, 1694a.
quarters, 1663a.
rations, etc., 1681a, 1682a.
reports, 1662d, 1664a, 1692b, 1693a.
reserve, 1651b.
retired officers detailed with, 1323a.
returns, 1664a.
Revised Statutes, sections of, repealed, 1650a.
rifle practice, 1691b.
Rules and Articles of War, 1671a.
sales, disposition of proceeds, 1692a.
  of arms, etc., to rifle clubs, 1700e, 1700f.
  of unserviceable property, 1696a.
shooting galleries, etc., 1691b.
statement to Congress, 1692b.
stores, etc., 1691a, 1692a.
subject to Articles of War, 1671a.
subsistence, 1662a, 1693a.
supplies, 1692a.
target practice, 1662c.
transportation, 1662a, 1693a.
travel allowances, 1663a, 1693a.
unserviceable property, 1696a.

Mining Claims, Philippine Islands, 2480. (See *Public Lands.*)

Mississippi River, 1043a.

Money:
donations to prisoners, 1788a.
National Guard, deductions from pay, 1742a, 1750a.

Monuments:
historic, regulations concerning, 1614d.
    reserving lands, 1614b.
    setting apart as, 1614b.
penalty for injury to, 1614a.

Morning and Evening Gun:
provision for firing, 1184a.

Muster:
militia, 1674a.

National Cemeteries:
roadways to, 2465a.

National Guard (see *Militia*, and *National Guard of the District of Columbia*):
annual contests for medals, etc., 1301a.
contests for medals, etc., 1301a, 1301b.
reserve, 1651b.

National Guard of District of Columbia, 1742a, 1750a, 1770a. (See *District of Columbia Militia*, and *Naval Battalion.*)

National Homes (*see Soldiers' Home*, and *State Homes*):
branch Homes, 2298a, 2316a, 2328a.
deceased members, effects of, 2316a.
officers, appointments, etc., 2298a.
pensions due deceased inmates, 2328a.

National Home for Disabled Volunteer Soldiers:
- admission to Government Hospital for Insane, 2347a, 2347a, note, 2347b.
- Board of Managers, 939a, 939b.
- National Sanitarium at Hot Springs, S. Dak., 939a, 939b.

National Parks:
- Gettysburg, 2391a.
- Statue of Liberty, Bedloes Island, 2447a.
- Yellowstone, 2443a.

National Quarantine, 2068a–2068c. (See *Quarantine.*)

National Red Cross Society:
- act of incorporation, Appendix C, pages 1330–1334.

National Sanitarium at Hot Springs, S. Dak, 939a, 939b.

National Society, Daughters of American Revolution:
- penalty for improper use of badge of, 1363b.

National Trophy, 1201a. (See *Medals,* and *Decorations.*)

Naturalization (see *Citizenship*) :
- anarchists, penalty for aiding to procure, 1892a.
- anarchy, etc., declaration as to, 1880b.
- cancellation of certificate of citizenship, 1892f.
- certificate as to arrival, 1880b.
  - of citizenship, cancellation of, 1892f.
    - penalty for isuing false, 1892g.
- certified copies of records, etc., to be evidence, 1892l.
- change of name, 1881b.
- children, 1871a, 1880b, 1889a.
- courts having jurisdiction, 1880a, 1892a.
  - jurisdiction restricted, 1880a.
- declaration in open court, 1880b.
  - of intention, 1880b.
- election-day restrictions, 1881b.
- examination by United States, 1892e.
- evidence as to character, 1880b.
  - as to residence, 1880b, 1887a.
- filing and docketing, 1881b.
- Filipinos, 1892m.
- final hearing, 1881a, 1892d.
- foreign titles, renunciation of, 1880b.
  - women married to Americans, 1885a.
- fraudulent, punishment for obtaining, 1892i.
- intention of permanent residence, 1880b.
- judicial inquiry, 1892a.
- jurisdiction restricted to residents of district, 1880a.
- language, 1892c.
- limit to prosecutions, 1892h.
- minors, 1871a, 1880b, 1889a.
- name, change of, 1881b.
- oath of allegiance to United States, 1880b.
- parents during minority of children, 1889a.
- penalty for obtaining fraudulent, 1892i.
  - for issuing false certificates of citizenship, 1892g.

Naturalization—Continued.
- persons owing allegiance, but not citizens, 1892m.
- petition, final hearing, 1892d.
  - for citizenship, 1880b.
  - public notice of, 1881a.
- polygamists, etc., forbidden, 1892b.
- polygamy, etc., declaration as to, 1880b.
- Porto Ricans, 1892m.
- previous declaration, 1880b.
- procedure, 1880b.
- prosecutions, limit to, 1892h.
  - of prior offenses, 1892j.
- qualifications, etc., 1880b.
- records, certified copies to be evidence, 1892l.
  - of orders, etc., 1892d.
- renunciation of other allegiance, 1880b.
- repealing section, 1892k.
- residence, evidence as to, 1880b, 1887a.
  - intention as to permanent, 1880b.
- restricted to residents of judicial district, 1880a.
- rules and regulations, authority to make, 1892l.
- titles of nobility, renunciation of, 1880b.
- United States, rights of, in opposition to, 1892e.
- widows and minor children, 1880b.
  - who are aliens, 1885a.
- witnesses, examination of, 1892d, 1892e.
  - subpœnas to, 1881a.

Naval Battalion:
- District of Columbia, 1781a.
- duties, 1781a.
- laws applicable to, 1781a.
- officers, 1781a.

Navigable Waters (see *River and Harbor Works*) :
- amendments, etc., of act, 1117e.
- bridges, litigation, 1114f, 1115b.
  - penalties, 1115b.
  - "persons" defined, 1117d, 1119b.
  - telephone and telegraph rights, 1114a.
  - time limit, 1117c, 1119c.
- dams, damages to private property, 1114d.
  - fishways, 1114d.
  - lights, signals, etc., 1114d.
  - penalties, 1114f.
  - "persons" defined, 1114i.
  - regulations for construction of, 1114b.
  - removal of, 1114f.
  - right to alter, etc., 1114h.
  - rights forfeited, 1114e.
  - rights reserved for navigation, 1114c.
  - time limit, 1114g.
- Grand River, Missouri, not navigable, 1097a.
- obstructions to navigation, 1115a.
- regulations for use of, 1113a, 1117a.
- wharves, etc., at Porto Rico, 1119a, 1119c, 1119d, 1119e.

Navy:
- computing time for retirement, 1379a.
- contests for medals, etc., 1201a, 1201b.

Navy—Continued.
  enlisted men, computing time for retirement, 1379a.
  medals and trophies, contests for, 1201a.
  pay, retired enlisted men, 1379a.
  retired enlisted men, 1379a.
Newspapers:
  preservation requirement repealed, 56b.
  subscriptions, 56a, 56b, 58a.
Niagara Falls:
  diversion of waters, 1150a, 1150b, 1150c, 1150d.
  permits, 1150b, 1150d.
  reservation of, 1150a.
Nurse Corps:
  rations, 791a.
Nurses:
  rations, 791a.
Oaths:
  Philippine Islands, 2493.
Officers (see *Commissioned Officers*):
  assignment of pay, 811a, 909a.
  assignment to militia, 1662e.
  deceased, accounts of, 1379a.
  funeral expenses, 1415a.
  Porto Rican Regiment, 505b.
  sale of fuel to, 740a.
  service required of generals before retirement, 1299a.
Official Misconduct, 1566a.
Open-Market Purchases (see *Purchases*):
  horses, 732a.
  medical supplies, etc., 932a.
  ordnance stores, etc., 1169a.
  provision for, made general, 1543a.
  reports, 932a, 1169a, 1230a, 1543a.
  Signal Corps stores, etc., 1230a.
Ordnance:
  colleges, issues to, 1292a.
  issues to colleges, State schools, etc., 1292a, 1292b.
Ordnance Department:
  American material preferred, 1201a.
  annual compensation, 1192a.
  appropriations available for two years, 279a.
  composition, 1151a.
  contests for medals, etc., 1201a, 1201b.
  credits for deductions from carriers for stores lost, etc., in transit, 1178a.
  details, 1155a, 1155b.
  employees, monthly rate of pay, 1192a.
  examinations, 1155a, 1155b.
  experiments, material for, 1201a.
  funds for stores transferred to Insular Department, 607a.
  loss, etc., of stores in transit, 1178a.
  medals, etc., contests for, 1201a, 1201b.
  method for charging indirect expenses, 1201c.
  morning and evening gun, 1184a.
  open-market, procurement of services in, 1169a.
  open-market purchases, 1169a.
  ordnance and ordnance stores, sale of, 1181a.
  organization, 1151a.
  pay, 1155a, 1192a.
Ordnance Department—Continued.
  purchases, 1169a.
  rifle contests, 1201b.
  sale of obsolete historical guns, 1178a, 1640a.
    of ordnance and ordnance stores, 1181a.
  services, procurement of, in open-market, 1169a.
  skilled draftsmen, 1161a.
  stores, loss, etc., of, in transit, 1178a.
  tests, material for, 1201a.
  trophies, etc., contests for, 1201a, 1201b.
Organization:
  Board of Engineers, 1098a.
  Corps of Engineers, 953a.
  Hospital Corps detachment, 924a.
  Military Academy detachments, 924a.
  militia, 1656a, 1657a, 1661a.
  Signal Corps, 1218a, 1219a.
Panama Canal. (See *Isthmian Canal,* and *Panama Canal Zone.*)
Panama Canal Zone (see *Isthmian Canal,* and *Isthmian Canal Commission*):
  alien labor, eight-hour law not applicable to, 1085m, 1085n, 1573a, 1573b.
  articles, etc., imported from, 1085k.
  eight-hour law, 1085m, 1085n, 1573a, 1573b.
  entry of persons into United States from, 1085k.
  government of, 1085b.
  imports from, 1085k.
  payment to Panama, 1085b.
  possession, etc., authorized, 1085b.
  tariff laws, 1085k.
  temporary government in President, 1085b.
Patented Devices, 68a.
Pay (see *Salaries*):
  accounts, paymaster, 801c.
    pay of army, 801a, 801d.
  additional, expert riflemen, 865a.
    first class gunners, 862a.
    second class gunners, 862a.
  annual compensation, monthly payments, 635a, 635b, 635c, 1192a.
  assignment of, 811a, 909a.
  assistant to Chief of Insular Bureau, 141d.
  associate professor of modern languages, Military Academy, 1458a.
  cadets, 1485a.
  chaplains, 1258a, 1258c.
  continuous service, 869a, 869b.
  contract surgeons, assignment of, 909a.
  dental surgeons, assignment of, 909a.
  doorkeeper, White House, 706a.
  electricians, etc., coast artillery corps, 1443g.
    coast and field artillery, 1443e.
  employees of Ordnance Department, 1192a.
  enlisted men, Porto Rican Regiment, 505b.
    Signal Corps, 1224a, 1224b.
  expert riflemen, 865a, 865b.
  extra-duty, 745a, 1510a.
    college details, 1291a.
  first-class gunners, 862a.

Pay—Continued.
gunners, 862a.
Hospital Corps, 919a.
longevity pay to retired officers, 824a, 824b.
militia, 801b, 1662a, 1963a.
National Guard, deductions from, 1742a, 1750a.
officers detailed in Ordnance Department, 1155a.
with Philippine Constabulary, 1332a.
Porto Rican Regiment, 505b.
retired brigadier-generals having civil war service, 1303c.
enlisted men, 1303a, 1379a.
officers, 824a, 824b, 1303a, 1323a, 2474a.
officers on active duty, 1303b.
retired officers on active duty, 1303b.
riflemen, expert, 865a.
second-class gunners, 862a.
transfer of, 811a, 909a.
Pay Accounts:
appropriation for Army, 801d.
assignment of, 909a.
paymasters' accounts, 801e.
Pay Department (see *Pay*) :
accounts, army appropriation, 801a, 801d.
of paymasters, 801c, 801e.
army appropriation, how disbursed, etc., 801a, 801d.
commutation of quarters, 830a.
enlisted men, 862a.
paymasters' clerks, travel allowances, 847a.
quarters, 830a.
travel allowances, paymasters' clerks, 847a.
Paymaster-General's Office:
assignment of paymasters' clerk to, 801e.
Paymasters' Clerks:
assignment of, to Paymaster-General's office, 801e.
sea travel, 847a, 847b.
Penal Offenses:
extortion, 1566a.
Penitentiary (see *Prisoners*) :
good conduct allowance, 1837a, 1837b, 1837c.
restoration of, forfeited, 1837b.
Pensions:
age made a disability, 2151c.
age rating, 2151a.
attorneys' fees, 2203a.
burial expenses, 2136a.
children's pensions to cease, 2149a.
civil war, 2151a, 2151b, 2151c, 2201a, 2201b.
dependent pension laws, 2151a, 2151b, 2151c, 2154a.
dependent relatives, 2149a, 2149b, 2154.
discharge, effect upon prior service, 2201a, 2201b.
deceased inmate National Home, 2328a.
during widowhood, 2149a.
effect of honorable discharge, 2201, 2201b.
evidence, 2201a, 2201b.
Pensions—Continued.
general pension laws, 2125a, 2131a, 2136a.
honorable discharge, effect of, on prior service, 2201a, 2201b.
increase of, 2125a, 2131a, 2166a, 2151a.
Indian war service, 2167a, 2167b.
inmates of Government Hospital for the Insane, 2347a, 2347a, note, 2347b.
loss of limb, 2131a.
Mexican war, increase of, 2166a, 2151a, 2151b.
militia, 1687a.
minor children of insane pensioner, 2347a.
penalty for procuring legislation, etc., 2203a.
reimbursements, 2136a.
remarriage, 2149a, 2149b, 2167a.
restored on renewed widowhood, 2149a.
retained by State Homes, 2324b.
service pension, 2151a, 2151b, 2151c.
total blindness, 2125a.
widows, 2149a, 2149b, 2154a, 2167a.
wife of insane pensioner, 2347a.
Periodicals, 58a.
Permits, 980. (See *District of Columbia*, and *Buildings*.)
Persons:
defined, 1114i, 1117d, 1119b.
Philippine Commission, Acts of, 2475–2495, 2481a, 2485a–2485c. (See *Army*, and *Philippine Islands*.)
Philippine Constabulary:
chiefs and assistant chiefs, officers detailed as, 1332a.
leaves of army officers serving with, 2495.
Philippine Islands (see *Philippine Commission*, *Philippine Scouts*, and *Army*) :
acts of Congress relating to, 2496, 2497.
annual tax for roads, etc., 2492.
army officers as justices of the peace, 2481.
arrest on reservations, 2480.
attorneys, 2475.
civil actions, 2476.
civilian witnesses, 2477.
commercial intercourse, 2112b.
criminal actions, 2476.
depositories of public moneys, 290a.
elections, 2485a–2485c.
establishment of civil provincial governments, 2491.
extradition, 2093a, 2093b, 2093c.
fees, 2477, 2481.
fugitives from justice, 2093c.
government of the Moro Province, 2487–2490.
habeas corpus, 2478, 2479.
insane natives serving in Army, 2348a.
inter-island traffic, 126g.
jurisdiction over reservations, 2480.
justice of the peace, jurisdiction, 2476.
lands, public, 1599a, 1599b, 1599c, 2480.
leaves of absence, 828a, 2495.
licenses for sale of liquors, 2480, 2481.
to harbor vessels, 126j.
liquors, penalty for sale, gift, etc., of, 2481a.

Philippine Islands—Continued.
military reservations, 1599a, 2480.
mining claims, 2480.
Moro Province, salaries, 2488, 2489, 2490.
navigation laws, enforcement of, 126k.
oath of office, 2493.
office, restrictions on election or appointment to, 2485b.
permits to foreign vessels, 126j.
property exempt from taxation, 2480.
provincial officers, eligibility, 2491.
provost courts, jurisdiction, 2476.
public lands, 1599a, 1599b, 1599c, 2480.
qualifications of electors, 2485a–2485c.
registration tax, 2485.
regulations governing trade, 126k.
reservations, jurisdiction over, 2480.
  military, 1599a, 2480.
restrictions on trade with, 126c, 126e, 126f, 126g, 126h, 126i, 126j.
right of eminent domain, 2483.
salaries, Moro Province, 2488, 2489, 2490.
sales of liquors in, 2480, 2481, 2481a, 2482.
  on reservations, 2480.
saline lands, 1599b, 1599c.
sea travel, 847b.
tariff duties, 2112a, 2496, 2497.
tax for roads, etc., 2492.
toll roads and bridges, 2494.
tonnage tax on foreign vessels, 126j.
trade, restrictions on, 126c.
transportation of passengers, 126f, 126g, 126h, 126i.
vessels exempt from tonnage dues, 2497.
  trading between United States and, 126c.
  trading with, 126e, 126f, 126g, 126h, 126i, 126j, 126k.
  transporting passengers, 126f, 126g, 126h, 126i.
voting, persons disqualified from, 2485c.
witnesses, civilian, 2477.
Philippine Scouts (see *Philippine Islands*):
continuous service, 869a, 869b.
service on Philippine Constabulary, 501a.
Photographs, 68f.
Porto Rico (see *Porto Rican Regiment*):
bridges, time limit, 1119c.
enlistments in Regular Army, 505a.
wharves, etc., 1119a, 1119c, 1119d, 1119e.
Porto Rican Regiment (see *Porto Rico*):
allowances, 505b.
appointments, 505b.
citizens, appointments, 505b.
  enlistments, 505b.
composition, 505b.
continuous-service pay, 869a.
details, 505b.
enlistments, 505b.
examinations, 505b.
field officers, 505b.
infantry, 505b.
officers, 505b.
pay and allowances, 505b.
reserve, 505b.
Porto Rican Regiment—Continued.
retirement of enlisted men, services as an officer, 869a.
  services of enlisted men as officer, 869a.
service outside of Island, 505a.
vacancies, 505b.
Post Commissary-Sergeants:
additional, 762a.
Post Exchange:
amusement rooms, etc., 715a.
appropriation, 715a.
buildings and equipments for, 715a.
Post Quartermaster-Sergeants:
additional, 707a.
Post Schools (see *Schools*, and *Service Schools*):
buildings and equipments for, 715a.
prizes, 714a.
Posts (see *Barracks*):
artillery troops, 1086a.
restrictions on establishment of, 1621a.
  on expenditures, 1086a.
President:
cadets, appointment of, 1479a.
commerce during hostilities in Philippine Islands, 2112b.
detail of civil employees, 11a.
  to colleges, 1290a, 1291a.
habeas corpus, suspension of, 361a.
militia, appointment, 1670a.
  calling forth of, 1669a.
  length of service, 1673a.
tariff duties and taxes, Philippine Islands, 2112a.
Printing:
appropriations, restrictions on, 68e.
books and documents, restrictions on, 68b.
documents, cost of binding and, 68c.
  restrictions on, 68b.
estimates for printing and binding, 68e.
illustrations, etc., 68f.
letter heads, 68e.
note heads, 68e.
Quartermaster's Department, 716a.
reports, cost of binding and, 68c.
Prisoners (see *Clothing, Military Prisoners,* and *Penitentiary*):
donation of clothing to, 1788b.
  of money to, 1788a.
good conduct allowance of United States prisoners, 1837a, 1837b, 1837c.
rations, 791a.
reward for escaped, 1409a.
transportation to their homes, 1788c.
United States, good conduct allowance, 1837a, 1837b, 1837c.
  restoration of forfeited good conduct allowance, 1837b.
Prisons:
details for, 679a, 679b.
transportation of discharged prisoners, 1788c.
Prizes (see *Medals, Trophies,* and *Decorations*):
cooks and bakers, 714a.
Proceeds of Sales (see *Sales*):
disposition of, 1106a, 1181a.

Promotions (see (*Appointments*) :
  chaplains, 1258a.
  Military Secretary's Department, 663a.
  Porto Rican Regiment, 505b.
  Signal Corps, 1222a.
Property (see *Public Property*) :
  arms, etc., issued to militia, 1700a, 1700b, 1700c.
  lost or destroyed, pay for, 1742a.
  proceeds of, 75a.
  sale of, 1106a, 1181a.
  serviceable, sale of, 1181a.
  transfer of, 1106a.
  unserviceable, sale of, 1106a.
Public Buildings and Grounds:
  Chief of Engineers to have charge of, 973a.
  trespassers, 978a.
  use of, prohibited, 978b.
Public Lands (see *Lands,* and *Reservations*) :
  Hawaii, 1625a.
  Mining claims on, in Philippine Islands, 2480.
  Philippine Islands, 1599a, 1599b, 1599c, 2480.
    cutting timber on, 2480.
    law concerning, 2480.
    mining claim on, 2480.
  sale of, 1106a.
Public Moneys (see *Depositories, Treasury Department,* and *Philippine Islands*) :
  depositories, 290a.
  received for stores transferred to Insular Department, 607a.
    from deductions from carriers for loss, etc., of stores, 1640a.
Public Printer:
  duplicating processes, etc., 68a.
  requisition on, for extra editions, 68d.
Public Property (see *Property*) :
  arms, etc., issued to militia, annual account of, 1700a, 1700b, 1700c.
  lost or destroyed, pay for, 1742a.
  proceeds of, 75a.
Public Works:
  eight-hour law, Canal Zone, 1085m, 1085n, 1573a, 1573b.
  labor and material, protection of, 1576a.
Punishment:
  extortion, 1566a.
Purchases:
  American material preferred, 1201a.
  books, etc., 58a.
  carriages, prohibited, 100a, 100b.
  horses from officers, 741a.
  medical stores, 932a.
  militia, 1692a.
  newspapers, 58a.
  open-market, 732a, 932a, 1169a, 1230a, 1543a.
  ordnance and ordnance stores, etc., 1169a.
  periodicals, 58a.
  river and harbor works, 1106a.
  schools, 1515b, 1519a.
  Signal Corps, stores and equipments, 1230a.
  small amounts, 768a.
Quarantine:
  control of stations, 2068a, 2068b.
  detention stations, establishment of, 2068a.
  land, condemnation proceedings, 2068b.
    purchase of, 2068b.
    transfer of title, 2068b.
  Marine-Hospital Service, 2068b, 2068c.
  Public Health and Marine-Hospital Service, 2068b, 2068c.
  punishment for violations of laws, etc., 2068c.
  unlawful entry of stations, etc., 2068c.
  yellow fever stations, establishment of, 2068a.
Quartermaster-Sergeants:
  additional, 707a.
Quartermaster's Department:
  amusement rooms, 715a.
  army service men, West Point, 1510a.
  clothing balances, 753a.
  doorkeeper at White House, 706a.
  extra-duty pay, 745a, 1510a.
  forage, 741b.
  fuel, 740a.
  gratuitous issues, 750a.
  heat, 740b.
  libraries, schools, etc., 715a.
  light, 740b.
  post-quartermaster sergeants, additional, 707a.
  printing, 716a.
  purchase of horses from officers, 741a.
  sale of fuel to officers, 740a.
Quarters:
  commutation, 830a, 1663a.
Rank:
  assistant to Chief of Insular Bureau, 141d.
  captains on General Staff Corps, 2471.
  chaplains, 1258a, 1258c.
  Corps of Engineers, 953a.
  Hospital Corps, 919a.
  Military Secretary's Department, 663a.
  Porto Rican Regiment, 505b.
  retired brigadier-generals having civil war service, 1303c.
Rations (see *Subsistence Department*) :
  applicants for enlistment, 791a.
  emergency, 770a.
  enlisted men, etc., 769a, 791a.
  enlisted men in low condition of health, 769a.
  general prisoners, 791a.
  issues of, 769a.
  militia, 1681a, 1683a.
  nurses, 791a.
Record and Pension Office (see *Military Secretary's Department, Military Secretary's Office,* and *Adjutant-General's Office*) :
  appropriation, 663c.
  consolidation of, with Adjutant-General's Office, 663a.
  employees, 663c.
  officers not affected by consolidation, 663b.
  records of Indian wars transferred to, 1239a.

Records:
transfer of, to War Department, 1239a.
Recruiting Service, 679a, 679b. (See *Recruiting Stations* and *Prisons.*)
Recruiting Stations:
details for, 679a, 679b.
Red Cross Society:
act of incorporation, Appendix C, pages 1330–1334.
Reenlistment (see *Enlisted Men* and *Enlistment*):
Porto Rican Regiment, 505b.
Regular Army (see *Army*):
continuous-service pay, 869a.
Porto Ricans eligible for enlistment, 505a.
retirement of enlisted men, 869a.
services of enlisted men as officers, 869a.
Regulations:
for canals, etc., 1113a, 1117a.
Reports:
board of examiners, Volunteer Army, 522a.
cost of printing and binding, 68c.
extra copies, 68d.
illustrations, etc., 68f.
militia, 1662d, 1664a, 1692b.
  inspections of, 1693a.
open-market purchases, 932a, 1169a, 1230a.
skilled draftsmen, etc., 1161a.
Reservations (see *Lands,* and *Public Lands*):
arrest on, 2480.
cutting timber on, 2480.
Hawaii, 1625a.
military posts, 1625a.
mining claims on, 2480.
Philippine Islands, 1599a, 2480.
  arrest on, 2480.
  cutting timber on, 2480.
  jurisdiction over, 2480.
  military authorities in charge of, 2480.
  mining claims on, 2480.
  sale of liquor on, 2480.
Reserves:
Porto Rico Regiment, 505b.
Residence:
legal, in Philippine Islands, 2485.
Retired Enlisted Men:
detail of noncommissioned officers to colleges, 1290a, 1291a.
pay, 1379a.
service as officers of volunteers, 869a.
  for retirement, 869a, 1379a.
Retired Officers (see *Retirement*):
active duty assignment to, 1303a.
allowances, 1323a.
Chief of Artillery, rank, pay, etc., of, 2474a.
  of Coast Artillery, rank, pay, etc., of, 2474a.
details to colleges, 1290a, 1291a.
  with organized militia, 1323a.
doorkeeper at White House, 706a.
having civil war service, rank and pay of, 1303c.
increase of rank and pay, 1303a.
longevity pay, 824a, 824b.
Retired Officers—Continued.
pay, 824a, 824b, 1303a, 1303b, 1303c, 1323a, 2474a.
  on active duty, 1303b.
rank, 1303a.
Retirement (see *Retired Officers*):
brigadier-generals having civil war service, 1303c.
computing time for, 869a, 1379a, 1381a.
continuous service, 869a, 869b.
detail extending beyond date of, 577a.
double time, 1381a.
enlisted men, service for, 1381a.
  service as commissioned officer of volunteers, 869a.
service required of generals before, 1299a.
Returns:
militia, 1664a.
Revised Statutes:
section 192 amended, 56b.
section 192 modified, 56a.
section 232 repealed, 1650a.
section 858 amended, 1815a.
section 1014 modified, 2093a.
section 1111 amended, 1508a.
section 1305 amended, 879a.
section 1308 amended, 753a.
sections 1625 to 1660 repealed, 1650a, 1661a.
section 1661 amended, 1691a.
section 2165 repealed, 1892k.
section 2167 repealed, 1892k.
section 2168 repealed, 1892k.
section 2173 repealed, 1892k.
section 3646 amended, 631a.
section 3648 modified, 58a.
section 3679 amended, 272a.
section 4076 amended, 1879a.
section 4693 modified, 2149a.
section 4708 amended, 2149a.
section 5270 extended, 2093c.
section 5271 extended, 2093c.
section 5272 extended, 2093c.
section 5273 extended, 2093c.
section 5274 extended, 2093c.
section 5275 extended, 2093c.
section 5276 extended, 2093c.
section 5277 extended, 2093c.
section 5278 modified, 2093b.
section 5279 modified, 2093b.
section 5481 amended, 1566a.
Reward (see *Deserters* and *Prisoners*):
apprehension of escaped prisoners, 1409a.
apprehension of deserters, 1409a.
Rifle clubs:
sale of ammunition, etc., to, 1700f.
sale of arms to, 1700e.
Riflemen, Expert, 865a, 865b.
Right of Eminent Domain, 2483.
River and Harbor Works (see *Navigable Waters*):
board of engineers, 1098a.
canals, etc., regulations for use of, 1113a.
condemnation proceedings, 1106b.
dredges, 1103a.
regulations for use of canals, etc., 1113a, 1117a.

River and Harbor Works—Continued.
  sale of unserviceable property, 1106a.
  transfer of property, 1106a.
  unserviceable property, sale of, 1106a.
    transfer of, 1106a.
  use of canals and similar works of navigation, 1113a.
Roads:
  Alaska, 2498, 2499.
  Philippine Islands, 2492, 2494.
Ruins (see *Monuments*):
  acquisition of lands, 1614b.
  historic, permits for excavations, etc., 1614c.
    regulations concerning, 1614d.
    reserving lands, 1614b.
    setting apart of, 1614b.
  penalty for injury to, 1614a.
Salaries (see *Pay*):
  annual, how paid, etc., 635a, 635b, 635c, 1192a.
  clerks and messengers at department headquarters, 572a.
  custodian and others, of Washington Monument, 990a.
  employees of Ordnance Department, 1192a.
  forfeiture, 635c.
  monthly payments of, annual compensation, 635a, 635b, 635c, 1192a.
Sales (see *Property,* and *Proceeds of Sales*):
  disposition of proceeds, 1106a, 1181a.
  liquors in Philippine Islands, 2481, 2482.
    on reservations in Philippine Islands, 2480.
  medical supplies, 935a.
  obsolete historical guns, 1178a, 1640a.
  public lands in Philippine Islands, 1599b.
  serviceable ordnance and ordnance stores, 1181a.
  unserviceable property, 1106a.
Saline Lands, 1599b, 1599c.
Sappers and Miners, 1515b.
School of Application for Cavalry and Field Artillery, 1519a.
School of Submarine Defense, 1519a.
Schools (see *Post Schools, Service Schools,* and *Army War College*):
  Alaska, 2498.
  appointments to Volunteer Army, 522a.
  Army War College, 1514a.
  artillery, 1519a.
  buildings and equipments for, 715a.
  engineer, 1515a, 1515b.
  general service and staff college, 1519a.
  of application for cavalry and field artillery, 1519a.
  post schools, 715a.
  prizes, 714a.
  purchases, 1515b, 1519a.
  submarine defense, 1519a.
Sea Traffic:
  between United States and Philippine Islands, 126c, 126e, 126f, 126g, 126h, 126i, 126j, 126k.
  inter-island, Philippine Archipelago, 126g.
Sea Traffic—Continued.
  Philippine Islands, licenses to harbor vessels, 126j.
    navigation laws, 126k.
    permits to foreign vessels, 126j.
    regulations governing, 126k.
    tonnage tax, 126j.
  restrictions on, with Philippine Islands, 126e, 126f, 126g, 126h, 126i, 126j.
Sea Travel (*see Steamships*):
  contract surgeons, 841a.
  dental surgeons, 841a.
  expert accountants, 847a.
  paymasters' clerks, 841a, 847a.
Secretary of War:
  canals, etc., regulations for use of, 1113a.
  depositories, designation of, 290a.
  detail of army officers to militia, 1662d, 1662e.
  funds for levees, Mississippi River, 1036a.
  horses, purchase of, from officers, 741a.
  maintenance of Statue of Liberty, 2447a.
  militia, detail of army officers for, 1662d, 1662e.
    reports to Congress, 1664a.
  open-market purchases, reports of, 932a, 1169a, 1230a.
  purchase of horses from officers, 741a.
Sergeants:
  Signal Corps, 1224a, 1224b.
Serums, 910a.
Service:
  continuous, for retirement, 869a.
  continuous-service pay, 869a.
  not personal, 932a.
  procurement of, in open market, 1169a.
  voluntary, 272a.
Service Schools (see *Schools,* and *Army War College*):
  Army War College, 1514a.
  artillery school, 1519a.
  engineer school, 1515a, 1515b.
  general service and staff college, 1519a.
  of application for cavalry and field artillery, 1519a.
  of submarine defense, 1519a.
Sharpshooters, 865b.
Signal Corps:
  chief of telegraph and cipher bureau of executive office, 1219a.
  composition, 1218a, 1219a.
  details, 1222a.
  enlisted men, 1224a, 1224b.
  open-market purchases, 1230a.
  organization, 1218a, 1219a.
  pay of enlisted men, 1224a, 1224b.
  promotion, 1222a.
  purchases of stores and equipment, 1230a.
  vacancies, how filled, 1222a.
Signal Office:
  annual estimates, etc., 1224c.
  skilled draftsmen, etc., 1224c.
Skilled Draftsmen, 1161a, 1224c.
Soldiers:
  burial of indigent, 2460a.
  homestead rights, 1587a.

Soldiers—Continued.
  transportation of remains, 1416a, 1417a, 1418a.
  transportation of remains of honorably discharged, 1418a.
Soldiers' Home (see *National Homes,* and *State Homes*):
  Board of Commissioners, Military Secretary a member of, 2263a.
Sons of Veterans:
  penalty for improper use of badge of, 1363b.
Stamped Envelopes, 68e.
State Homes, 2321a, 2324a, 2324b. See *National Homes,* and *Soldiers' Home.*)
States:
  issues of ordnance and ordnance stores to, 1292a, 1292b.
Statue of Liberty, Bedloes Island:
  maintenance of. 2447a.
Steam Laundries:
  outside work permitted, 719a.
    use of proceeds, 719a.
Steamships (see *Sea Traffic, Sea Travel,* and *Transport Service*):
  in transport service not to be disposed of, 126a.
Stores:
  issues of, to States, 1292a, 1292b.
  military, loss, etc., of, in transit, 1178a.
  militia, 1692a.
  transferred to Insular Department, 607a.
Submarine Mines, 1515b, 1443f.
Subscriptions (see *Purchases, Newspapers,* and *Disbursements*):
  books, newspapers, etc., 56a, 56b, 58a.
Subsistence:
  militia, 1662a, 1693a.
Subsistence Department:
  emergency ration, 770a.
  ice, issue of, to organizations of enlisted men, 769a.
  issues of rations to enlisted men in low condition of health, 769a.
  payments of small amounts, 768a.
  post commissary sergeants, additional, 762a.
  purchases of small amounts, 768a.
  rations, 769a, 770a, 791a.
Supplies (see *Purchases*):
  militia, 1692a.
  open-market purchases, 932a, 1169a, 1230a, 1543a.
  sales of medical, 935a.
Surgeon-General of the Army (see *Medical Department*):
  advisory board for hygienic laboratory, 910b.
  viruses, toxins, etc., 910a.
Surgeons (see *Contract Surgeons*):
  acting assistant, burial expenses of, 1417a.
  contract, 907a.
    assignment of pay by, 909a.
    authority of when in charge of hospital, 913a.
Surgeons—Continued.
  dental, assignment of pay by, 909a.
  number authorized, 908a.
    detail to Military Academy, 908a.
    sea travel, 841a.
Target Practice:
  militia, 1662c.
Tariff Duties:
  Philippine Islands, 2112a, 2496, 2497.
    vessels exempt from tonnage dues, 2497.
Tax:
  Philippine Islands, 2112a, 2492.
  property exempt from, 2480.
  registration, 2485.
Telegraph Lines:
  Alaska, 1233a.
  right to cross bridges, 1114a.
Telegraph and Cipher Bureau of Executive Office, 1219a.
Territories:
  issues of ordnance, etc., to educational institutions in, 1292a, 1292b.
Timber, 2480. (See *Public Lands* and *Reservation.*)
Tonnage Dues, 2497.
Toxins, 910a.
Trade:
  Philippine Islands, 126e, 126f, 126g, 126h, 126i, 126j, 126k.
    permits to foreign vessels, 126j.
    regulations governing, 126k.
    tonnage tax, 126j.
  restrictions on, with Philippine Islands, 126c, 126e, 126f, 126g, 126h, 126i.
Traffic:
  time of war, 720a.
Transfers:
  civil employees, 28b.
Transport Service:
  not to be discontinued without action of Congress, 126a.
  steamships not to be disposed of, 126a.
  transports, restrictions on use of, 724a.
Transportation:
  bond-aided railroads, 843a, 844a.
  by sea of army supplies, 126d.
  discharged military prisoners, 1788c.
  in kind, 843a, 844a.
  land-grant railroads, 843a, 844a.
  mileage, deductions from, 843a.
  militia, 1662a, 1693a.
  passengers to and from Philippine Islands, 126f, 126g, 126h, 126i.
  Philippine Islands, vessels trading between United States and, 126c–126k.
  remains of acting assistant surgeons, 1417a.
    civilian employees of Army, 1418a.
    deceased officers and soldiers, 1416a, 1417a.
    honorably discharged soldiers, 1418a.
  transports, use of, 724a.
  troops in time of war, 720a.
  vessels trading with Philippine Islands, 126c–126k.

Transports:
restriction on use of, 724a.
Travel Allowances (see *Mileage*):
bond-aided railroad, 843a, 844a.
militia, 1663a, 1693a.
officers traveling without troops, 840a.
transportation in kind, 843a, 844a.
Treasury (see *Depositories, Public Moneys,* and *Treasury Department*):
depositories, 290a.
Treasury Department (see *Accounts, Accounting Officers,* and *Disbursing Officers*):
accounts, closing of, 605b.
limitation of, 605b.
paymasters', 801c.
pay of the Army, 801a.
annual statement to Congress, 75a.
credits for deductions from carriers for stores lost, etc., in transit, 1640a.
depositories, 290a.
limitation of accounts, 605b.
proceeds of public property, 75a.
Troops:
transportation of, in time of war, 720a.
Troops of the Line:
Artillery Corps, 1443a.
cavalry band, 1424a.
Trophies (see *Medals, Decorations,* and *Prizes*):
annual contest for, 1201a, 1201b.
Uniform:
chaplains, 1258a.
Union Veteran Legion:
penalty for improper use of badge of, 1363b.
Union Veterans' Union:
penalty for improper use of badge of, 1363b.
United Spanish War Veterans:
penalty for improper use of badge of, 1363b.
United States Prisoners (see *Penitentiary*):
good-conduct allowance, 1837a, 1837b, 1837c.
Vacancies (see *Appointments,* and *Promotions*):
Corps of Engineers, 953a.
Judge-Advocate General's Department, 694a.
Porto Rican Regiment, 505b.
Vehicles:
name of Department to be printed on, 100a, 100b.
not to be purchased or maintained, 100a, 100b.
Vessels (see *Sea Traffic, Sea Travel,* and *Steamships*):
exempt from tonnage dues, 2497.
inter-island traffic, Philippine Islands, 126g.
passengers between United States and Philippine Islands, 126f, 126g, 126h, 126i.
Philippine Islands, license to harbor vessels, 126j.
Vessels—Continued.
Philippine Islands, permits to foreign vessels, 126j.
tonnage tax, 126j.
trading between United States and Philippine Islands, 126c–126k.
Vessels of the United States:
exempt from tonnage dues, 2497.
transportation of army supplies, 126d.
Viruses, 910a.
Voluntary Service, 272a. (See *Service.*)
Volunteers (see *Volunteer Army*):
appointments, as judge-advocates, 694a.
continuous-service pay, 869a.
enlisted men, service as commissioned officers, 869a.
how organized, 518a.
National Sanitarium at Hot Springs, S. Dak., 939a, 939b.
service as commissioned officer of, 869a.
time computed for retirement, 869a.
Volunteer Army (see *Volunteers*):
age limit, 522a.
appointments, 522a.
board of examiners, 522a.
reports, 522a.
commissions in, 522a.
examinations for commissions, 522a.
graduates of military schools, 522a.
military schools, 522a.
organization of, 518a.
rules and regulations, 522a.
schools, 522a.
service in militia, 522a.
Volunteer Forces (see *Volunteer Army,* and *Military Establishment*):
how organized, 518a.
Vote:
legal residence in Philippine Islands, 2485.
War Department:
assignment of clerks, messengers, and laborers to duty in, 573b.
transfer of records to, 1239a.
Washington Monument:
care of, 990a.
salaries, 990a.
Wharves, etc.:
Porto Rico, 1119a, 1119c, 1119d, 1119e.
White House:
doorkeeper, pay and allowances of, 706a.
Witnesses:
competency determined, 1815a.
fees of civilian, Philippine Islands, 2477.
refusal of civilian to testify, 2477.
Woman's Relief Corps:
penalty for improper use of badge of, 1363b.
Writ of Habeas Corpus:
Philippine Islands, 2478, 2479.
suspension of, 361a.
Yellowstone National Park:
Use of electricity by private parties, 2443a.

TABLE OF REVISED STATUTES CITED IN THE ORIGINAL WORK AND THE SUPPLEMENT, AND THE PARAGRAPHS IN WHICH THE CITATIONS OCCUR.

Revised Statutes (sections).	Military laws (paragraphs).	Revised Statutes (sections).	Military laws (paragraphs).	Revised Statutes (sections).	Military laws (paragraphs).
152	3	224	1388	437	451
158	12		1388a	441	452
159	12	225	128		1893
161	20	226	140	442	453
163	32	227	141	463	1894
164	33		184	467	1970
165	34	228	129	470	2113
166	35	229	130	471	2114
167	38	230	131	472	2115
168	39	231	132	751	346
169	25	232	1650a	752	347
170	40		1661a	753	348
172	28	233	183	754	349
173	21	236	219	755	350
174	22		632	756	351
175	23	237	635	757	352
176	24	255	1640	758	353
177	13	271	193	759	354
178	14	278	215	760	355
179	15	280	216	761	356
180	17	281	217	762	357
181	18	282	218	763	358
182	19		1390	764	359
183	51	283	197	765	360
	691	301	283	766	361
184	110	305	284	858	1815
185	111	306	309		1815a
186	112	307	310	882	1818
187	113	308	311	883	1819
188	114	309	312	886	1820
189	115	310	304	887	1821
190	116	346	332	888	1822
192	56	347	333	895	1823
	56a	354	336	896	1824
	56b	355	334	905	1825
193	59		1593	906	1826
194	87	356	337	908	1827
195	86	357	338	1014	2093a
196	90	358	313	1059	362
197	92a		339	1060	363
214	117	359	340	1061	364
215	135	360	341	1062	365
216	122	361	342	1063	366
217	123	364	343	1064	367
218	124	367	344	1065	368
219	125	383	345	1066	369
	709	391	314	1067	370
220	126	392	315	1068	371
	720	415	418	1069	372

Table of Revised Statutes cited in the original work and the supplement, and the paragraphs in which the citations occur—Continued.

Revised Statutes (sections).	Military laws (paragraphs).	Revised Statutes (sections).	Military laws (paragraphs).	Revised Statutes (sections).	Military laws (paragraphs).
1070	373	1128	662	1187	800
1071	374	1130	667	1188	801
1072	375	1131	680	1189	802
1073	376	1132	121	1190	805
1074	377		702	1191	592
1075	378	1133	708	1192	798
1076	379	1134	711	1198	692
1077	380	1135	710	1199	696
1078	381	1136	734	1201	697
1080	382		1621	1202	1810
1081	383		1622	1203	1801
1082	384	1138	719	1205	589
1083	385	1140	758		1284
1084	386	1141	763	1206	958
1085	387	1142	762	1207	957
1086	388	1143	766	1209	1342
1087	389	1144	690	1210	1344
1088	390		764	1211	566
1089	391		778		1347
1090	392	1145	779	1212	1349
1091	393	1147	776	1213	1486
1092	394	1148	775	1214	1278
1093	395	1149	780	1215	1487
1094	500	1150	767	1216	1358
1097	556	1151	953	1217	558
1098	557	1152	971	1219	565
1100	1437	1153	1089	1220	756
	1438	1155	968		891
	1440	1156	967		1175
1102	1419	1157	970	1221	751
1103	1427	1158	567	1222	1332
1104	1420		590	1223	1327
1105	1421		960	1224	1331
1106	1445	1159	1158	1225	1288
1107	1450	1161	1159		1289
1108	1446	1162	1164		1290
1109	1162	1163	1165		1290a
1110	1163	1164	1166	1226	493
1111	1508a	1165	1168		1351
1112	506	1166	1167	1227	1360
1114	570	1167	1172	1228	1328
1116	670		1173	1229	1329
	1364		1174	1230	1330
1117	672	1168	899	1231	1627
	1367	1169	568	1232	1335
1118	673		913		1413
	1368	1170	903	1234	788
	1401	1172	902	1235	743
1119	669	1174	912	1236	744
1120	677	1175	933	1237	1412
	1371	1176	950	1239	929
1121	1258	1177	951	1241	1641
1122	1258	1178	952	1243	1297
1123	1260	1182	792	1244	1298
	1261	1183	569	1245	1305
1124	1264		804	1246	1306
1125	1263	1184	793	1247	1307
1126	1265	1185	794	1248	1308
1127	1266	1186	799	1249	1309

Table of Revised Statutes cited in the original work and the supplement, and the paragraphs in which the citations occur—Continued.

Revised Statutes (sections).	Military laws (paragraphs).
1250	1310
1251	1311
1252	1312
1253	1313
1254	1314
1255	1317
1256	1319
1257	1318
1258	1301
1259	1320
1260	1293
1261	807
1262	818
1263	819
1264	811
1265	1286
1266	829
1267	820
1268	836
1269	817
1270	810
1273	849
1274	824 1316
1275	825
1276	865
1277	857 930
1279	809 862 1157
1280	862
1281	863
1282	868 1373
1283	876
1284	869 1374
1285	883 1359
1287	742
1288	790 886
1289	850
1291	898
1292	878a
1294	777 789
1295	773
1296	749
1298	750
1299	782 854
1300	783 896
1301	784 895
1302	752 893
1303	852 897 1176 1638
1304	853 1637
1305	879 879a 1403
1306	880
1307	881
1308	753 753a 882 894
1309	1458
1310	1466
1311	1467
1312	1468
1313	1463
1314	1464 1470
1315	1479
1317	1480
1318	1481
1319	1482
1320	1483
1321	1484
1322	1489
1323	1490
1324	1491
1325	1494
1326	1495
1327	1497
1328	1498
1329	1499
1330	1501
1331	1462
1332	1502
1333	1473
1334	1469
1335	1477
1336	1471
1338	1472
1339	1485
1340	1476
1341	1511
1342	Page. 964
1420	1402
1421	447 1376
1437	448
1466	564
1596	419
1600	432
1601	420
1603	427
1608	436
1609	437
1610	438
1611	422
1612	429
1615	439
1619	443
1620	444
1621	445
1623	433
1625 to 1660	1650a 1661a
1661	277 1691 1691a 1692a 1693 1693a
1662	1190
1663	1191
1664	1192
1665	1193
1666	1194
1667	1195
1668	1197
1669	1198
1670	1702
1671	1199
1753	142
1754	143 150
1755	144
1757	158
1758	159
1759	162
1760	163
1761	164
1762	165
1763	166
1764	41 168
1765	169
1766	170 855 856
1769	9
1773	10
1774	11
1775	11
1776	180
1777	182 486
1778	160
7179	57 181
1780	92 171
1781	178 1562

Table of Revised Statutes cited in the original work and the supplement, and the paragraphs in which the citations occur—Continued.

Revised Statutes (sections).	Military laws (paragraphs).	Revised Statutes (sections).	Military laws (paragraphs).	Revised Statutes (sections).	Military laws (paragraphs).
1782	1563	1998	1399	2125	1957
	2253		1876	2126	1958
1784	179	1999	1877	2127	557
1791	2466	2000	1878		1959
1792	2467	2001	1879	2128	1961
1793	2468	2003	2066	2129	1962
1794	2469	2004	2067	2130	1963
1797	978	2043	1896	2131	1964
	978a	2045	1897	2132	1965
1798	979	2052	1898	2133	1966
1799	255	2053	1916	2134	1968
	980	2054	1919	2135	1969
1800	995	2055	1907	2136	1971
1801	996	2056	1899	2137	1972
1802	1006	2057	1900	2138	1973
1803	1007	2058	1921	2139	1975
1804	1008	2059	1918	2140	1983
1805	1010	2060	1902	2141	1985
1806	1009	2062	1903	2142	1990
1807	997	2063	1905	2143	1991
1808	998	2064	1910	2144	1986
1809	999	2066	1901	2145	1987
1810	1001	2067	1906	2146	1988
1811	1002	2073	1920	2147	2001
1812	987	2074	1912		2023
	1000	2075	1915	2148	2002
1829	988	2076	1913		2024
1830	985	2077	1914	2149	2003
1835	993	2078	1967		2025
1838	1595	2079	1922	2150	2004
1841	1777	2080	1923		2026
1856	1778	2081	1924	2151	2005
1857	1779	2082	1925		2027
1860	1321	2083	1926	2152	2006
1977	2051	2084	1927		2028
1978	2052	2085	1928	2153	2008
1979	2053	2086	1929	2154	1996
1980	2054	2087	1930	2155	1997
1981	2055	2088	1931	2156	1998
1982	582	2089	1932	2157	2009
	2056	2090	1933	2165	1880
1983	2057	2100	1936		1881
1984	2058	2101	1937		1892k
1985	2059	2102	1940	2166	1882
1986	2060	2109	1934	2167	1884
1987	2061	2110	774		1892k
1988	2062	2111	1941	2168	1885
1989	2063	2112	1942		1892k
1990	2064	2113	1943	2169	1886
1991	2065	2114	1944	2170	1887
1992	1870	2115	1945	2171	1888
1993	1871	2116	1950	2172	1889
1994	1872	2117	1951	2173	1890
1995	1873	2118	1952		1892k
1996	1397	2119	1953	2174	1891
	1874	2120	1954	2257	1581
1997	1398	2121	1955	2258	1582
	1875	2124	1956	2289	1584

Table of Revised Statutes cited in the original work and the supplement, and the paragraphs in which the citations occur—Continued.

Revised Statutes (sections).	Military laws (paragraphs).	Revised Statutes (sections).	Military laws (paragraphs).	Revised Statutes (sections).	Military laws (paragraphs).
2290	1585	3623	186	3690	279
2304	1586		637		624
	1587a	3624	250	3691	281
	1592		643	3692	613
2305	1587	3625	251		786
	1587a	3626	252	3709	80
2306	1588	3627	253		81
2307	1589	3628	254		1526
2308	1590	3629	255		1527
2309	1591	3630	256		1528
2393	1583	3631	257	3710	1536
2438	1400	3632	258	3711	83
2460	2069	3633	259		1578
2474	2423	3634	260	3712	84
2475	2424	3635	261		1579
	2425	3636	262	3713	85
2476	1091	3637	263		1580
2477	1619	3638	264	3714	1520
3466	245	3639	303	3715	1552
3467	246		593	3716	712
3468	247		608		1533
3469	76	3640	297	3717	1537
	231	3643	621	3731	1555
3470	232	3644	298	3732	717
3471	248	3645	630		1521
3472	249	3646	631	3733	1522
3473	305		631a		1623
3474	306	3647	631	3735	82
3475	307	3648	58a		1556
3476	308		617	3736	1523
3477	234		812		1594
	628	3651	609	3737	1557
3478	235	3652	610	3738	1572
3479	236	3653	295a	3739	1558
3480	237	3654	293	3740	1559
3489	238	3657	291	3741	1540
3490	239	3658	292		1560
3491	240	3661	68	3742	1561
3492	241	3662	69	3743	1541
3493	242	3663	71		1571
3494	243	3664	72	3744	1539
3591	285	3665	66		1567
3593	296	3669	62	3745	1568
3594	288		267	3746	1569
3595	286	3670	63	3747	1570
3614	295		268	3748	754
3615	299	3672	75		1646
3616	300	3678	271	3752	1596
3617	611		620	3828	79
3618	612	3679	272		1532
	785		272a		1529
3620	290		619	3960	67
	301	3681	273	3995	58
	606	3682	42		2072
3621	302		55	4076	1879a
	607		274	4653	1021
3622	185	3683	54	4664	1022
	636	3689	276	4671	1026

Table of Revised Statutes cited in the original work and the supplement, and the paragraphs in which the citations occur—Continued.

Revised Statutes (sections).	Military laws (paragraphs).	Revised Statutes (sections).	Military laws (paragraphs).	Revised Statutes (sections).	Military laws (paragraphs).
4679	1027	4779	2213	5271	2093c
4680	1028	4783	2256	5272	2093c
4692	2116	4785	2203	5273	2093c
4693	2117	4786	2204	5274	2093c
	2149a	4787	942	5275	2090
4694	2118	4788	944		2093c
4695	2119	4790	945	5276	2091
4696	2120	4791	947		2093c
4697	2121		949	5277	2092
4698	2122	4792	2068		2093c
4698½	2186	4814	2275	5278	2093b
4699	2136	4815	2263	5279	2093b
4700	2197	4817	2264	5281	2079
4701	2198	4818	2267	5282	2080
4702	2137		2269	5283	2081
4703	2138	4819	889	5284	2082
4704	2200		2271	5285	2083
4705	2142	4820	2280	5286	2084
4706	2144	4821	2276	5287	2085
4707	2148	4822	2277	5288	2086
4708	2149	4823	2278	5289	2087
	2149a	4824	2283	5290	2088
4710	2182	4825	2287	5291	2089
4711	2183		2321	5297	2018
4713	2185	4826	2288	5298	2017
4715	2257	4827	2289	5299	2016
4716	2154a	4828	2290	5300	2019
	2227	4829	2298	5301	2029
4718	2232	4830	2319	5302	2030
4719	2234	4832	2325	5303	2231
4720	2176	4834	2296	5304	2032
4724	2261	4835	2332	5305	2033
4730	2157	4837	2337	5306	2034
4731	2158	4838	2340	5307	2035
4732	2173	4839	2342	5308	2036
4733	2258	4843	2344	5309	2037
4734	2259	4856	2345	5310	2038
4735	2146	8854	2346	5311	2039
4744	2250	4870	2449	5312	2040
4746	624	4871	2450	5313	2041
	2211	4872	2451	5314	2042
	2254	4873	2452	5315	2043
4747	639	4874	2453	5316	2044
	2236	4875	2454	5317	2045
4748	2193	4877	2455	5318	2046
4749	2201	4878	2458	5319	2047
4764	2216	4879	2463	5320	2048
4765	2217	4880	2464	5321	2049
	2223	4881	2462	5322	2050
4766	2147	4882	2461	5331	2104
	2224	5153	289	5332	2105
	2230	5244	1095	5333	2106
	2330	5246	1094	5334	2107
4767	2215	5248	1093	5335	2108
4768	2220	5250	1096	5336	2109
4769	2221	5251	1092	5337	2110
4776	2242	5252	1038	5338	2111
4777	2243	5253	973	5388	1604
4778	2212	5254	1039		1999

Table of Revised Statutes cited in the original work and the supplement, and the paragraphs in which the citations occur—Continued.

Revised Statutes (sections).	Military laws (paragraphs).	Revised Statutes (sections).	Military laws (paragraphs).	Revised Statutes (sections).	Military laws (paragraphs).
5403	103	5493	650	5573	2097
5408	104	5494	651	5574	2098
5418	105	5495	652	5575	2099
5451	1564	5496	653	5576	2100
5455	1406	5497	654	5577	2101
5456	1645		655	5578	2102
5481	1566		1644	5595	462
	1566a	5598	656	5596	463
5483	644	5501	657	5597	464
5486	2255		1565	5598	465
5488	645	5502	658	5599	466
5489	646	5503	659	5600	467
5490	647	5570	2094	5601	468
5491	648	5571	2095		
5492	649	5572	2096		

O

22924—08——86

LIBRARY
UNIVERSITY
OF
CALIFORNIA

YC 53698

UB500
A2
1908
U.S. War Dept
166431